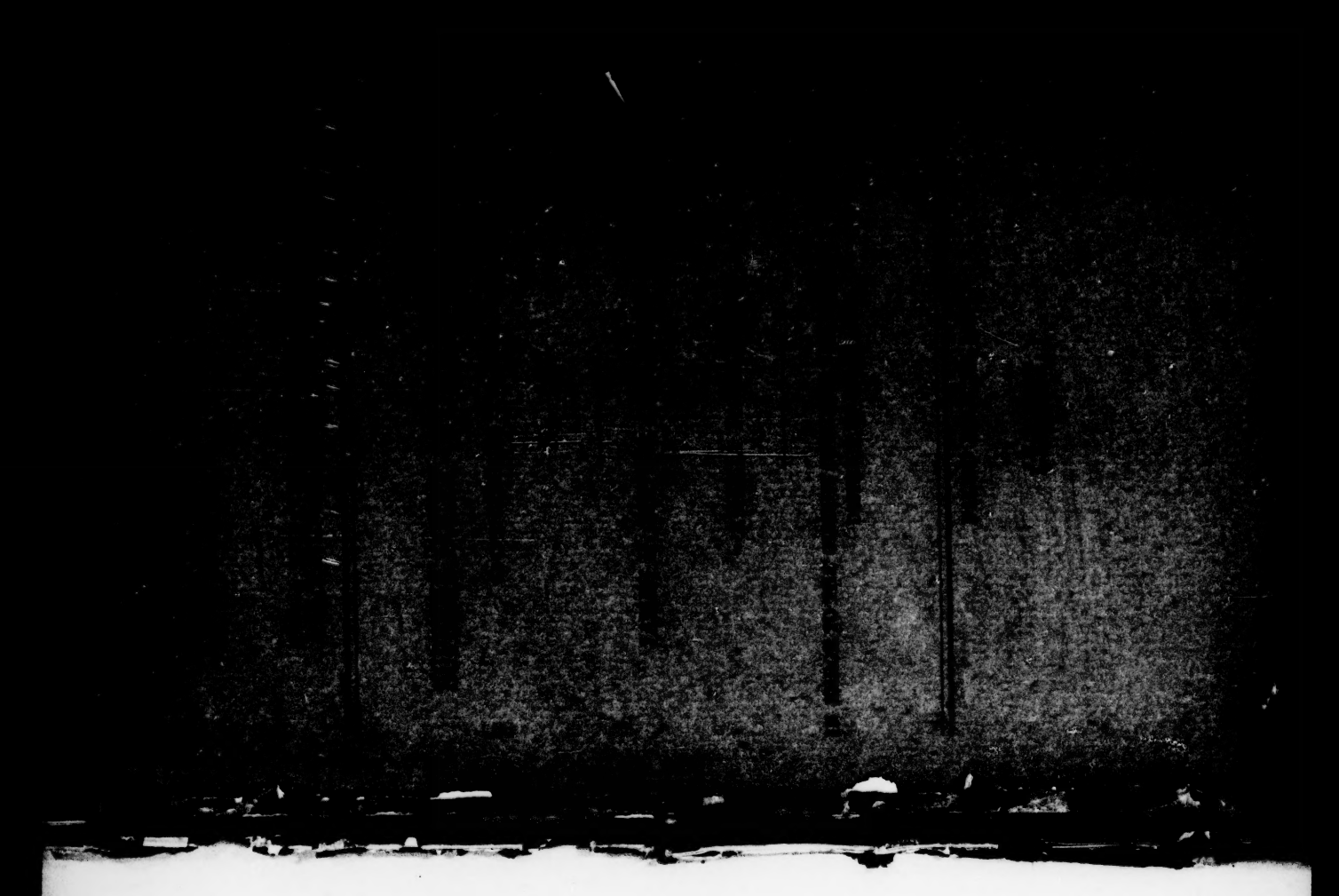

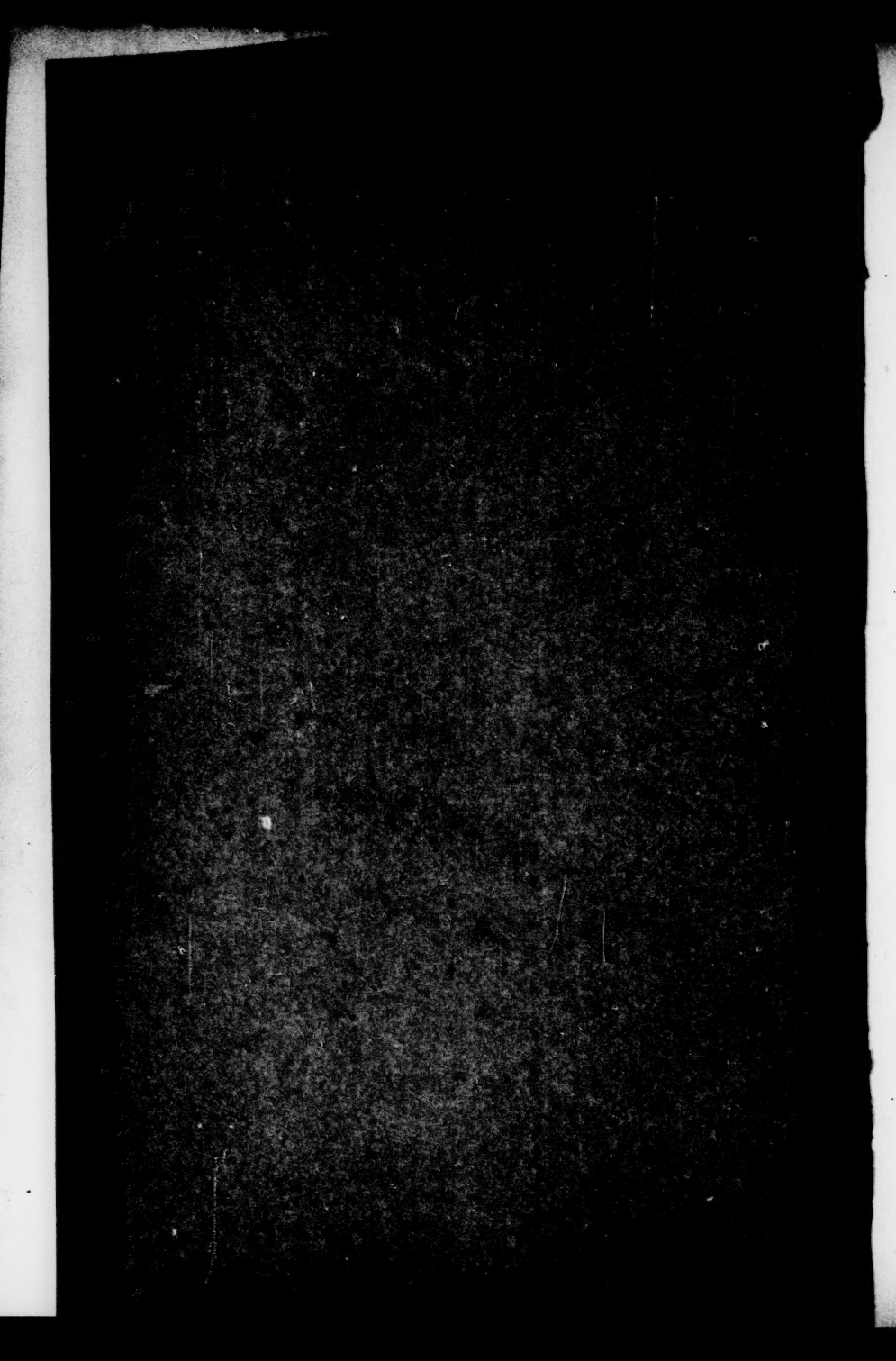

(14,637.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 160.

JAMES H. BROWN, PLAINTIFF IN ERROR,

vs.

AMELIA P. WEBSTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

INDEX.

	Original.	Print.
Caption	1	1
Amended petition	1	1
Demurrer	3	2
Order overruling demurrer	4	3
Plea in abatement	4	3
Motion to strike plea in abatement from the files	7	5
Order to strike plea in abatement from the files	8	5
Answer	8	6
Reply	11	7
Stipulation waiving jury, &c.	12	8
Stipulation for submission on briefs, &c.	13	9
Judgment	14	10
Motion for leave to enter exception to judgment *nunc pro tunc*, &c.	14	10
Affidavit of H. C. Brome	15	11
Motion for new trial	17	12
Order overruling motion for new trial	18	12

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 29, 1894.

	Original	Print.
Bill of exceptions	18	13
Testimony of James H. Brown	19	13
Thomas A. Creigh	24	16
James H. Brown (recalled)	27	19
H. C. Broome	28	19
Thomas A. Creigh (recalled)	31	21
Deed, James H. Brown to Amelia P. Webster, March 19, 1881	32	22
Letter, James H. Brown to Davis & Snyder, February 2, 1881	33	23
Letter, James H. Brown to Davis & Snyder, February 26, 1881	34	23
Letter, James H. Brown to Davis & Snyder, March 11, 1881	35	24
Letter, James H. Brown to Davis & Snyder, March 17, 1881	35	24
Letter, James H. Brown to Davis & Snyder, April 21, 1881	36	24
Letter, James H. Brown to Davis & Snyder, March 19, 1881	37	25
Letter, Davis & Snyder to James H. Brown, March 3, 1881	37	25
Telegram, Davis & Snyder to James H. Brown, March 2, 1881	38	26
Letter, O. F. Davis & Co. to James H. Brown, October 14, 1884	38	26
Letter, O. F. Davis & Co. to James H. Brown, October 17, 1884	39	26
Letter, J. A. Smith to O. F. Davis, October 20, 1884	39	27
Letter, O. F. Davis & Co. to J. H. Brown, October 22, 1884	40	27
Letter, James H. Brown to O. F. Davis & Co., October 24, 1884	40	27
Letter, James H. Brown to O. F. Davis & Co., January 29, 1886	41	27
Notice to Amelia P. Webster from Thomas Yule, Jan. 20, 1886	41	28
Letter, O. F. Davis & Co. to J. H. Brown, February 2, 1886	42	28
Letter, James H. Brown to O. F. Davis & Co., February 6, 1886	43	29
Letter, O. F. Davis & Co. to J. H. Brown, February 6, 1886	43	29
Letter, J. H. Brown to O. F. Davis & Co., February 9, 1886	44	29
Letter, O. F. Davis & Co. to J. H. Brown, February 10, 1886	44	30
Letter, J. H. Brown to O. F. Davis & Co., February 11, 1886	44	30
Letter, J. H. Brown to O. F. Davis & Co., April 3, 1886	45	30
Letter, J. H. Brown to O. F. Davis & Co., June 15, 1886	45	30
Letter, J. H. Brown to O. F. Davis, April 27, 1887	46	31
Letter, O. F. Davis Co. to J. H. Brown, May 18, 1887	46	31
Letter, J. H. Brown to O. F. Davis Co., May 20, 1887	47	31
Letter, J. H. Brown to O. F. Davis, May 18, 1887	47	31
Letter, O. F. Davis Co. to James H. Brown, May 31, 1887	47	32
Letter, J. H. Brown to O. F. Davis Co., July 5, 1887	48	32
Letter, O. F. Davis Co. to J. H. Brown, January 31, 1888	49	33
Letter, O. F. Davis Co. to J. H. Brown, September 1, 1888	49	33
Letter, J. H. Brown to O. F. Davis Co., September 4, 1888	50	33
Letter, O. F. Davis Co. to J. H. Brown, April 6, 1889	50	33
Letter, J. H. Brown to O. F. Davis Co., April 19, 1889	51	34
Letter, O. F. Davis Co. to J. H. Brown, May 3, 1889	51	34
Letter, J. H. Brown to O. F. Davis Co., May 4, 1889	52	34
Check, O. F. Davis Co. to J. H. Brown, May 18, 1887	52	34
Check, O. F. Davis Co. to Rainbolt & Childs, July 11, 1887	52	35
Record in case of Yule *vs.* Webster	53	35
Petition	53	35
Affidavit of J. A. Smith	57	38
Security for costs	58	38
Order as to security for costs	58	39
Answer	58	39
Amended reply	62	41
Amendment to amended reply	65	44

	Original.	Print.
Submission	67	45
Decree	68	45
Report of referee	71	47
Mandate of supreme court	72	48
Clerk's certificate	72	48
Judge's certificate	73	48
Clerk's certificate	73	49
Stipulation as to facts	73	49
Judge's certificate to bill of exceptions	75	50
Writ of error	77	51
Citation	78	52
Bond	79	52
Clerk's certificate	82	55

1 Pleas before the Honorable Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, sitting in the circuit court of the United States for said district of Nebraska, within the eighth judicial circuit, at the term of November, A. D. 1890.

Be it remembered that on the 13th day of December, 1889, a-amended petition was filed in the office of the clerk of said circuit court; which said amended petition is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff,
vs.
JAMES H. BROWN, Defendant. } Amended Petition.

The plaintiff, for cause of action herein, states that she is a resident and citizen of the State of New York; that the defendant is a resident and citizen of the State of Nebraska, and that the amount in controversy herein between the said plaintiff and defendant exceeds, exclusive of interest and costs, the sum and value of two thousand dollars; that on or about the 19th day of March, 1881, the defendant, in consideration of $1,200.00 paid by plaintiff to defendant, conveyed to plaintiff by deed under his hand the following described land, in the county of Pierce, State of Nebraska: The southeast quarter and the northwest quarter of section twenty-five, township twenty-five, range two, and the southeast quarter of section twenty-five, township twenty-six, range three, all west of the 6th principal meridian, containing 480 acres; that in said deed the said defendant, for himself and his heirs, executors, and administrators, did undertake, promise, and covenant with the plaintiff and
2 her heirs and assigns that he was lawfully seized of said premises; that they were free from incumbrance; that he had good right and lawful authority to sell the same, and he did further covenant that he would warrant and defend the said premises and the title thereto unto the said plaintiff and her heirs and assigns forever *forever* against the lawful claims and demands of all persons whomsoever.

The plaintiff further states that in the year 1886 one Thomas Yule commenced an action in the district court of the county of Pierce, State of Nebraska, to recover the said land from plaintiff by reason of a title superior to the title conveyed to plaintiff by defendant, and also to set aside and cancel the title to said premises attempted to be conveyed to plaintiff by the defendant in the aforesaid deed; that the defendant was notified of said action by this plaintiff, and at the request of the defendant plaintiff defended said action and employed counsel therein; that such proceedings were had in such action that final judgment was rendered therein

confirming the title of the said Thomas Yule to said premises and annulling the title so attempted to be conveyed to the plaintiff by the defendant, and plaintiff was evicted from said premises; that said premises were, at the time of said eviction, worth the sum of $6,000; that plaintiff has been damaged by the loss of said premises in the sum of six thousand dollars and has paid out and disbursed as necessary costs $122.40; as attorneys' fees and charges in defending said suit the sum of $220.00, which amounts, with interest from April 1st, 1889, *is* due plaintiff from defendant.

Wherefore the plaintiff prays judgment against the defendant for the sum of $6,342.40 and the costs of this suit.

SAVAGE, MORRIS & DAVIS,
Att'ys for Plaintiff.

3 COUNTY OF DOUGLAS, } ss:
State of Nebraska, }

Herbert J. Davis, being duly sworn, on oath says he is one of plaintiff's attorneys herein; plaintiff is absent from the State of Nebraska; that affiant verily believes the statements of the foregoing petition to be true.

HERBERT J. DAVIS.

Subscribed in my presence and sworn to before me this 11th day of December, 1889.

[SEAL.] E. M. FAIRFIELD,
Notary Public.

Upon the back of said petition appear endorsements in words and figures following, to wit: No. 40, N. In U. S. cir. c't. Amelia P. Webster *vs.* James H. Brown. Amended petition. Filed Dec. 13, 1889. Elmer D. Frank, clerk. Savage, Morris & Davis, att'ys — pl'ff.

Thereupon, afterwards, to wit, on the 27th day of December, 1889, demurrer was filed in said case; which said demurrer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff, }
vs. } Demurrer.
JAMES H. BROWN, Defendant. }

Comes now the defendant, James H. Brown, and demurs to the amended petition of plaintiff herein filed, and for cause of such demurrer says:

First. That this court has no jurisdiction on the subject of this action, for that it appears on the face of said amended petition that the amount in controversy herein between the plaintiff and defendant, exclusive of interest and costs, does not exceed the sum and value of two thousand dollars, but, the contrary thereof, the amount in

controversy herein, exclusive of interest and costs, is the sum and value of $1,542.40 and no more.

4 Second. Said amended petition does not state facts sufficient to constitute a cause of action in favor of plaintiff and against defendant.

JAMES H. BROWN,
By BROME, ANDREWS & SHEEAN,
His Attorneys.

Upon the back of said demurrer appear endorsements in words and figures following, to wit: No. 40, docket N. In circuit court, dist. of Nebraska. Amelia P. Webster *vs.* James H. Brown. Demurrer. Filed Dec. 27, 1889. Elmer D. Frank, clerk. Brome, Andrews & Sheean.

Thereupon, afterwards, to wit, at the November term of said court, on the 20th day of January, 1890, the following proceedings were had and done in said cause, as appears of record on Journal "O" of said court, to wit:

AMELIA P. WEBSTER *vs.* JAMES H. BROWN. } 40, N. Demurrer Overruled.

This cause came on to be heard at the November, 1889, term of this court and was argued and submitted to the court on the demurrer of the defendant to the amended petition of the plaintiff, and the court, being sufficiently advised in the premises, does now on this day overrule said demurrer.

Defendant is ruled to answer in twenty days and plaintiff to reply in thirty days from this date.

Thereupon, afterwards, to wit, on the 7th day of February, 1890, plea in abatement was filed in said case; which said plea in abatement is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff, *vs.* JAMES H. BROWN, Defendant. } Plea in Abatement.

5 Comes now the defendant, James H. Brown, and represent to this honorable court that the amount in controversy herein between the said plaintiff and defendant does not exceed, exclusive of interest and costs, the amount and value of two thousand ($2,000.00) dollars, and that this court has no authority or jurisdiction in the premises to hear or entertain this cause or render judgment herein or take any proceedings herein, and in that behalf this defendant alleges that the only cause of action set up or stated in plaintiff's petition arises from and is based upon an alleged fail-

ure of plaintiff's title to the following-described land, situated in the county of Pierce and State of Nebraska, to wit, the southeast quarter & the northwest quarter of section twenty-five, township twenty-five, range two, and the southeast quarter of section twenty-five, township twenty-six, range three, all west of the sixth principal meridian, and containing four hundred eighty acres, it being in that behalf alleged by plaintiff that on the 19th day of March, 1881, this defendant by deed of general warranty conveyed said land to plaintiff; that the title to said premises so conveyed by defendant to plaintiff has failed and plaintiff been evicted therefrom.

This defendant allege- that the entire purchase price of said premises paid by plaintiff to defendant on the said 19th day of March, 1881, in full consideration of and for said conveyance was $1,170.00 and no more; that plaintiff has paid out and disbursed as necessary court costs in and about the suit respecting the title to the said premises the sum of $122.40 and no more, and has paid as attorneys' fees and charges in defending said suit the sum of $220.00 and no more.

That said land at the time of said conveyance was and still is wild, uncultivated prairie land; that plaintiff made no expenditures thereon and paid no charges against the same, except the sum of $247.84 paid by plaintiff as taxes upon said land; that the
6 said sums, to wit, $1,170.70 purchase price, $122.40 costs of suit, $220.00 attorneys' fees, and $247.84 taxes, aggregating the sum of $1,760.24, are the only expenditures, payments, or investments of any kind or nature ever made or paid by plaintiff on account of, for, or respecting said land.

Defendant further says that said plaintiff has received on account of and for the taxes paid by said plaintiff on said land, as hereinbefore recited, and on account of taxes paid by this defendant on said land prior to the time of the conveyance thereof by defendant to said plaintiff the sum of $939.59, the same being paid to said plaintiff to reimburse plaintiff on account of and for taxes paid by plaintiff and her grantors on said premises and received by plaintiff for the purpose aforesaid on the 25th day of March, 1889; that the amount in controversy in this action does not and cannot exceed, exclusive of interest and costs, the sum of $822.65; that the claim made in plaintiff's amended petition herein filed that the amount in controversy in this action exceeds, exclusive of interest and costs, the sum and value of two thousand dollars and the prayer of plaintiff's petition in that behalf is untrue in fact and is made for the fraudulent and unlawful purpose of procuring jurisdiction of this controversy to be taken by this court, contrary to law.

Wherefore defendant prays that this action be abated and all proceedings had herein be discontinued and set aside.

JAMES H. BROWN, *Defendant*,
By BROME, ANDREWS & SHEEAN,
His Attorneys.

THE STATE OF NEBRASKA, } ss:
County of Pierce, District of Nebraska, }

James H. Brown, being first duly sworn, on his oath says that he is the above-named defendant; that he has read the foregoing
7 plea and knows the contents thereof, and that the matters and things therein stated are true in substance and in fact.

JAS. H. BROWN.

Subscribed in my presence and sworn to before me this 30th day of December, 1889.

[SEAL.] BENJ. LINDSAY,
Notary Public.

Upon the back of said plea in abatement appear endorsements in words and figures following, to wit: No. 40, N. In circuit court United States, district of Nebraska. Amelia P. Webster *vs.* James H. Brown. Plea in abatement. Filed Feb. 7, 1890. Elmer D. Frank, clerk. Brome, Andrews & Sheean.

Thereupon, afterwards, to wit, on the 21st day of April, 1890, motion was filed in said case; which said motion is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER }
vs.
JAMES H. BROWN. }

The plaintiff moves the court to strike from the files the plea in abatement filed by defendant for the reason that no such pleading is permissible by the rules and practice of this court in actions at law and for the further reason that the statements of said plea can only properly be pleaded by answer.

SAVAGE, MORRIS & DAVIS,
Pl'ff's Att'ys.

Upon the back of said motion appear endorsements in words and figures following, to wit: No. 40, doc. N. Amelia P. Webster *vs.* Jas. H. Brown. Motion to strike plea in abatement from files. Filed Apr. 21, 1890. Elmer D. Frank, clerk. S., M. & D., pl'ff's att'ys.

Thereupon, afterwards, to wit, at the April term of said court, on the 22nd day of April, 1890, the following proceedings
8 were had and done in said cause, as appears of record on folio —, Journal "O" of said court, to wit:

AMELIA P. WEBSTER
vs.
JAMES H. BROWN. } 40, N.

This cause being heard on the motion of the plaintiff to strike the plea in abatement of defendant from the files herein, the court does, after consideration thereof, now, on this day, order and adjudge that said plea in abatement be, and is hereby, stricken from the files in this case, and defendant is granted leave to answer to the merits in ten days and plaintiff to reply in fifteen days.

Thereupon, afterwards, to wit, on the 1st day of May, 1890, answer was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff,
vs.
JAMES H. BROWN, Defendant. } Answer.

Now comes defendant and, for answer to plaintiff's amended petition herein filed—

First. Admits that plaintiff is a resident and citizen of the State of New York; that defendant is a resident and citizen of the State of Nebraska; denies that the amount in controversy herein between the plaintiff and defendant exceeds, exclusive of interest and costs, the sum of two thousand dollars, but, to the contrary thereof, avers and charges the fact to be that the amount in controversy in this action, exclusive of interest and costs, does not exceed the sum of $822.65, and avers and charges the fact to be that this court has no authority or jurisdiction to hear or determine this action.

9 And, further answering, this defendant admits that on the 19th day of March, 1881, defendant conveyed to plaintiff by deed of general warranty the premises described in said amended petition; but this defendant denies that plaintiff paid to defendant in consideration of and for the purchase of said premises the sum of twelve hundred dollars, as alleged in said amended petition; but, to the contrary thereof, this defendant alleges and charges the fact to be that the consideration paid by plaintiff to defendant for said conveyance was the sum of $1,170.00 and no more.

And, further answering, this defendant admits that in the year 1886 one Thomas Yule commenced an action in the county of Pierce and State of Nebraska to set aside and cancel the title to said premises held by plaintiff by virtue of the aforesaid conveyance from the defendant, and admits that a final judgment was rendered in said action affirming the title of the said Thomas Yule to said premises and setting aside plaintiff's title thereto, but this defendant denies that plaintiff was evicted from said premises.

Second. And, further answering, this defendant says that plaintiff ought not to recover herein, for that said plaintiff was fully advised on

the said 19th day of March, 1881, of the nature and character and condition of the title to the premises in controversy in this action, then held by this defendant and on that date conveyed to plaintiff; that plaintiff at the same time was fully advised of the character and condition and existence of the title to said premises under which the said Thomas Yule asserted an interest in said premises in the said action in the district court of the county of Pierce; that more than five years have elapsed since plaintiff's right of action herein accrued, and the same was at the time of the commencement of this action and for a long time prior thereto barred by the statute of limitations.

Third. And, further answering, this defendant says that said land at the time of the conveyance to plaintiff was and still is wild, uncultivated prairie land; that plaintiff made no improvements
10 thereon and paid no charges against the same except the sum of $247.84 paid by plaintiff as taxes upon said land; that the following sums, to wit, $1,170 purchase price, $122.40 costs of suit, $220.00 attorneys' fees, and $247.84 taxes, aggregating the sum of $1,760.24, are the only expenditures, payments, or investments of any nature or kind ever made or paid by plaintiff on account of, for, or respecting said land; that plaintiff has received from said Thomas Yule, the person who prosecuted said action in the district court of Pierce county to recover said land from plaintiff, on account of and for the taxes paid by plaintiff on said land prior to the time of the conveyance thereof by defendant to said plaintiff the sum of 939.59, the same being paid to said plaintiff to reimburse plaintiff on account of and for taxes paid by plaintiff and her grantors on said premises and received by plaintiff for the purpose aforesaid on the 25th day of March, 1889; that defendant is entitled to have said sum set off against plaintiff's claim herein.

JAMES H. BROWN,
By BROME, ANDREWS & SHEEAN,
His Attorneys.

THE STATE OF NEBRASKA, }
County of Douglas and District of Nebraska. }

I, H. C. Brome, being first duly sworn, on my oath say that I am one of the duly authorized attorneys for defendant in the above-entitled cause; that said defendant is now absent from the district and State of Nebraska; that I have read the foregoing answer and know the contents thereof, and that the matters and things therein contained are true in substance and in fact, as I verily believe.

H. C. BROME.

Subscribed in my presence and sworn to before me this 1st day of May, 1890.

[SEAL.] ALICE M. BROME,
Notary Public.

Upon the back of said answer appear endorsements in
11 words and figures following, to wit: No. 40, doc. N. In the circuit court of the U. S. for district of Nebraska. Amelia

P. Webster *vs.* James H. Brown. Answer. Filed May 1, 1890. Elmer D. Frank, clerk. Brome, Andrews & Sheean.

Thereupon, afterwards, to wit, on the 15th day of May, 1890, reply was filed in said case; which said reply is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER
vs.
JAMES H. BROWN.

For reply to the answer herein the plaintiff says she denies that the consideration for the conveyance of said land was the sum of $1,170.00; denies that plaintiff was advised at any time before conveyance to plaintiff of the character and condition of the title to said land, or that there was any contract representation or understanding other than contained in the deed of conveyance from the defendant to the plaintiff; denies that more than five years have elapsed since the plaintiff's right of action herein accrued; denies that this action is barred by the statute of limitations.

And, further replying in this behalf, the plaintiff avers that on or about the 5th day of July, 1887, the defendant promised in writing over his signature to pay the claim of plaintiff on which this action is based and in writing duly acknowledged his liability therefor. Plaintiff denies that she has received from Thomas Yule the sum of $939.59, but admits that she did receive the sum of $657.69, but denies that defendant is entitled to a set-off for that amount.

Wherefore the plaintiff prays as in her petition.

SAVAGE, MORRIS & DAVIS,
Plaintiff's Att'ys,
Per H. J. DAVIS.

12 DISTRICT OF NEBRASKA, *ss:*

Herbert J. Davis, being duly sworn, says he is one of the attorneys for plaintiff in the above-entitled action; affiant says plaintiff is absent from the State of Nebraska, and that he believes the facts stated in the foregoing reply are true.

H. J. DAVIS.

Subscribed in my presence and sworn to before me this 15th day of May, 1890.

ELMER D. FRANK, *Clerk.*

Upon the back of said reply appear endorsements in words and figures following, to wit: No. 40, N. Webster *vs.* Brown. Reply. Filed May 15, 1890. Elmer D. Frank, clerk. Savage, Morris & Davis, pl'ff's att'ys.

Thereupon, afterwards, to wit, on the 6th day of June, 1890, stipulation was filed in said case; which said stipulation is in words and figures following, to wit:

In the Circuit Court of Dist. of Nebraska.

AMELIA P. WEBSTER
vs.
JAS. H. BROWN.

It is stipulated that the testimony herein be taken before the clerk and reduced to writing by C. A. Potter, Esq., and that the cause be submitted to the court on such testimony, a jury being waived by both parties.

June 6, 1890.

SAVAGE, MORRIS & DAVIS,
Att'ys for Pl'ff.

H. C. BROME,
Attorney for Defendant.

Upon the back of said stipulation appear endorsements in words and figures following, to wit: No. 40, N. Webster *vs.* Brown. Stipulation. Filed Jun- 6, 1890. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 12th day of July, 1890, stipulation was filed in said case; which said stipulation is in
13 words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff,
vs.
JAMES H. BROWN, Defendant. } Stipulation.

It is hereby stipulated and agreed that the attorney for plaintiff shall prepare and serve upon defendant within ten days from this date a brief or argument in said cause; that within ten days thereafter defendant shall prepare and serve upon attorney for plaintiff his brief or argument in said cause; that within ten days thereafter plaintiff may prepare a brief in reply, furnishing a copy of said brief to attorney for *plaintiff*, and that thereupon said cause shall be submitted upon the pleadings and proofs to Honorable Elmer S. Dundy, judge; that if said judge shall decide said cause during the present pending May term of said court, then such decision shall be entered, both parties to have notice of the time and place of making said decision or an opportunity afforded to prepare a bill of exceptions by either party, if desired.

If a conclusion shall not be reached in said cause by said judge during the present pending May term of said court, then said de-

cision shall be announced and made at the next regular term of said court and bill of exceptions be settled at that term.

Dated Omaha, Nebraska, July 3rd, 1890.

J. H. DAVIS, *Pl'ff's Att'y.*
H. C. BROME,
Attorney for Defendant.

Upon the back of said stipulation appear endorsements in words and figures following, to wit: No. 40, N. In the circuit court of the U. S., dist. of Nebr. Amelia P. Webster *vs.* James H. Brown. Stipulation. Filed Jul- 12, 1890. Elmer D. Frank, clerk. Brome, Andrews & Sheean.

14 Thereupon, afterwards, to wit, at the November term of said court, on the 1st day of December, 1890, the following proceedings were had and done in said cause, as appears of record on folio 95, Journal "P" of said court, to wit:

AMELIA P. WEBSTER *vs.* JAMES H. BROWN. } No. 40, N. Trial to Court and Judgment.

This cause, coming on for hearing on the pleadings and evidence, was submitted to the court without the intervention of a jury, trial by jury being waived by stipulation of parties, on consideration whereof the court finds on the issue joined for the plaintiff and that the said defendant is indebted to her in the sum of $2,030.00. It is therefore considered by the court that the said plaintiff, Amelia P. Webster, recover from the said defendant, James H. Brown, the said sum of $2,030.00 and $—— costs herein expended, and that execution issue therefor.

Thereupon, afterwards, to wit, on the 15th day of December, 1890, motion was filed in said case; which said motion is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff, *vs.* JAMES H. BROWN, Defendant. } Motion.

Comes now the defendant in the above-entitled cause and moves the court here that this defendant be permitted and allowed to enter an exception to the judgment of this court made and entered on the first day of December, 1890, as of the date when said judgment was entered; that defendant be permitted to file a motion for a new trial in said cause as of that date, and that an appeal from the judgment of this court to the Supreme Court of the United
15 States be allowed in this cause in the manner provided by law, for that said finding and judgment of said court was entered in said court in the absence of said defendant and his attor-

neys and without the knowledge of either of them, and that said defendant and his attorney had no knowledge of the rendition of said judgment until the 15th day of December, 1890, as will more fully appear from the affidavit of H. C. Brome, filed herewith, in support of this motion.

JAMES H. BROWN,
By H. C. BROME,
His Attorney.

Attached to said motion is affidavit in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff,
vs.
JAMES H. BROWN, Defendant.

Affidavit.

THE STATE OF NEBRASKA,
District of Nebraska, Douglas County, } *ss:*

H. C. Brome, being first duly sworn, on his oath says that he is and at all times has been the sole attorney for defendant in the above-entitled cause, and has had exclusive charge and management of said cause; that the testimony in said cause was taken at the May, 1890, term of the circuit court of the United States for the district of Nebraska, and said cause submitted upon printed briefs to Honorable Elmer S. Dundy, judge, at said term of said court, but was held under advisement by said judge until the expira-
16 tion of said term.

That on the first day of the regular November, 1890, term of said court and at the time of the call of the law docket of said court for said term this affiant was present in court; that when the above-entitled cause was called by the court his honor Judge Dundy announced from the bench that he had not had time to examine the record and brief in said cause, but would examine same and decide said cause at some time during the term: that affiant was not present in said court and was absent from the city of Omaha on the first day of December, 1890, and was absent from said city continuously from the first day of December, 1890, until the 13th day of December, 1890; that defendant and affiant, his attorney, were not advised and did not know that said cause had been decided by said court and had no notice thereof whatever until the 15th day of December, 1890, when this affiant first learned that a finding and judgment had been entered in said cause.

That said finding and judgment was entered in the absence of defendant and his attorney and without their knowledge.

And further affiant sayeth not.

H. C. BROME.

Subscribed in my presence and sworn to before me this 15th day of December, 1890.

ELMER D. FRANK, *Clerk.*

Upon the back of said motion appear endorsements in words and figures following, to wit: No. 40, N. In the circuit court of U. S., district of Nebraska. Amelia P. Webster *vs.* James H. Brown. Motion. Filed Dec. 15, 1890. Elmer D. Frank, clerk. H. C. Brome.

Thereupon, afterwards, to wit, on the said 15th day of December, 1890, motion for new trial was filed in said case; which said
17 motion is in words and figures following, to wit:

In the Circuit Court of the United States within and for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff,
vs.
JAMES H. BROWN, Defendant. } Motion for New Trial.

Comes now the defendant, James H. Brown, and moves the court here that the findings of the court heretofore made in this cause be set aside and the judgment heretofore entered herein be vacated and a new trial granted herein for the following reasons:

First. The findings and the judgment of the court is contrary to law.

Second. The findings and judgment of the court is contrary to the evidence.

Third. The court erred in overruling the demurrer to the jurisdiction in said cause.

Fourth. The court erred in overruling defendant's plea of abatement filed herein.

Fifth. Errors of law occur-ing at the trial, to which defendant excepted at the time.

JAMES H. BROWN,
By H. C. BROME, *His Attorney.*

Upon the back of said motion for new trial appear endorsements in words and figures following, to wit: No. 40, N. In the circuit court of the U. S., dist. of Nebr. Amelia P. Webster *vs.* James H. Brown. Motion for new trial. Filed Dec. 15, 1890. Elmer D. Frank, clerk. Brome.

18 Thereupon, afterwards, to wit, at the November term of said court, on the said 15th day of December, 1890, the following proceedings were had and done in said cause, as appears of record on folio 173, Journal "P" of said court, to wit:

AMELIA P. WEBSTER
vs.
JAMES H. BROWN. } No. 40, N.

Motion for New Trial Overruled.

This cause having been argued and submitted to the court on the motion of the defendant to set aside the judgment and for a new trial herein, H. C. Brome having appeared for the motion and H. J. Davis against the same, and the court being fully advised in the premises, it is now, on this day, ordered and adjudged by the court that said motion be, and the same is hereby, overruled.

To which ruling and order of the court said defendant, by his attorney, then and there duly excepted.

Thereupon, afterwards, to wit, on the 27th day of December, 1890, bill of exceptions was filed in said case; which said bill of exceptions *are* in words and figures following, to wit:

In the Circuit Court of the United States within and for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff,
vs.
JAMES H. BROWN, Defendant.

19 Be it remembered that upon the trial of the above-entitled cause in the circuit court of the United States for the district of Nebraska, before Honorable Elmer S. Dundy, judge of said court, a jury having been waived in said cause by the parties by stipulation in writing, the following testimony was offered and given in evidence:

AMELIA P. WEBSTER, Plaintiff,
vs.
JAMES H. BROWN, Defendant.

Present at the taking of the testimony, on behalf of the plaintiff, H. J. Davis, and on behalf of the defendant, H. C. Brome.

It is agreed that the fees of Charles A. Potter, reporter, be charged as costs in the case.

The plaintiff offers in evidence a warranty deed from the defendant to the plaintiff, dated 19th day of March, 1881.

The defendant objects to the introduction of any testimony in this case for the reason that this court has no jurisdiction of the subject-matter.

The deed is hereto attached, marked "Exhibit A."

JAMES H. BROWN, sworn for the plaintiff, examined in chief by Mr. DAVIS, testified as follows:

20 1 Q. You are the defendant in this action?
A. Yes, sir.
2 Q. I ask you to look at the paper I now hand you and say whether or not it is in your handwriting and signed by you.

A. Yes; that is my handwriting and my signature to it.

3 Q. Did you know Davis & Snyder, to whom this letter was addressed?

A. Yes, sir.

4 Q. What was their business?

A. They were engaged in the real-estate business.

5 Q. At Omaha?

A. At Omaha, Nebraska.

6 Q. On February second, 1881, you were living at Pierce?

A. Yes, sir.

7 Q. This letter was sent by you to Davis & Snyder, was not it?

A. Yes, sir.

8 Q. What property is referred to in this letter where you speak of your three-quarter section? Is it the property which you afterwards sold to Mrs. Webster and the same that is mentioned in this suit?

A. Yes, sir.

The letter just referred to is offered in evidence, and the same is hereto attached, marked Exhibit B.

9 Q. I hand you a letter dated February 26th, 1881, addressed to Davis & Snyder, signed by you, and ask you if that was a letter sent by you to them.

A. Yes, sir.

10 Q. And relates to the same land, does it not?

A. Yes, sir.

The letter is offered in evidence, and the same is hereto attached, marked Exhibit "C."

11 Q. I hand you a letter dated March 11th, 1881, and ask you if that was signed by you and sent to Davis & Snyder.

21 A. Yes, sir.

12 Q. That refers to the same land, does it not?

A. Yes, sir.

The letter is offered in evidence, and the same is hereto attached, marked Exhibit "D."

13 Q. The same is true of the letter dated March 17th, 1881, is not it?

A. Yes, sir.

The letter is offered in evidence, and the same is hereto attached, marked Exhibit "E."

14 Q. I hand you a letter dated March 10th, 1881, and ask if that is not a letter sent by you to Davis & Snyder relating to the same land.

A. Yes, sir.

The letter is offered in evidence, and the same is hereto attached, marked Exhibit "F."

15 Q. The same is true of a letter dated April 21st, 1881, is not it?

A. Yes, sir.

The letter referred to is offered in evidence, and the same is hereto attached, marked Exhibit "G."

16 Q. Have you the original letter written by Mrs. Webster's agent here?

A. I have some of them.

17 Q. Will you produce, to be used in evidence, such letters as you have relating to the transactions between you and the plaintiff's agents concerning this land, which letters were described in a notice served May 9th, 1890?

A. I sold out my real-estate business, and the parties purchasing the same have been careless and negligent of my correspondence and I cannot find nearly all of it. I will produce all I can find.

(Witness produces a letter.)

22 18 Q. This is a letter received by you from Davis & Snyder, is not it?

A. Yes, sir.

19 Q. Relating to the land in question?

A. Yes, sir.

The paper is offered in evidence, and a copy of same is hereto attached, marked Exhibit "H."

20 Q. The paper I show you now is a telegram received by you from Davis & Snyder?

A. Yes, sir.

21 Q. Have you a copy of your answer that you made?

A. I have not.

22 Q. Do you remember what you answered to that telegram?

A. I think I accepted; my recollection is that I gave him two days, and my answer was 1,200 dollars, net; I am confident that I answered it to that effect.

23 Q. Did you answer by telegram?

A. No; I answered it personally. I came to Omaha; I made a note on the back—answered personally.

24 Q. Then, you did not answer in writing?

A. No; I came to Omaha.

25 Q. Do you remember your answer that you made to them?

A. Yes, sir.

26 Q. What was it?

A. I agreed with them to take twelve hundred dollars for the land, net to me.

The telegram referred to is offered in evidence, and the same is hereto attached, marked Exhibit "I."

27 Q. By net, you mean after deducting costs, expenses, commission, do you not?

A. No; I meant $1,200 to me, without any deductions.

28 Q. You mean that that amount should come to you from the sale after deducting commissions, expenses, etc., from the gross price?

23 A. No; that was the net price that was to be net to me.

29 Q. What was the gross price?

A. There was no gross price ever fixed. The price I gave was twelve hundred dollars for the 480 acres of land.

Cross-examined by Mr. BROOME:

30 Q. What was the arrangement as to who was to pay the commissions on this sale, if anybody?

A. There was no commissions to be charged to me on the sale. They were making an investment for Mrs. Webster.

31 Q. What did they say to you about that?

A. They said they at first thought they would take it themselves, but were not in shape to trade, but they had a client or relative whose money they wished to invest and would take it for her and help me out of a short corner that I was in.

32 Q. When did that conversation occur—when you were here at Omaha?

A. Yes; when I was here.

33 Q. What was the relation or method of doing business between Webster & Snyder and yourself in reference to commissions?

Objected to as immaterial.

34 Q. We were doing business—I at Pierce, Nebraska, and they here—and no commissions were ever charged by either one of us; no fees until the sale of this land.

35 Q. Were any commissions charged on this sale?

A. It seems to me that they took thirty dollars over and above the amount that they were to pay for it. Whether it was for commissions or what it was for I do not know. There was none to have been charged, and the understanding was that there should be none.

Mr. DAVIS: Your understanding that you had with them, of which you speak, did not differ from the terms you had
24 named in the letter you had theretofore written?

A. No, sir.

THOS. A. CREIGH, sworn for the plaintiff, examined in chief by Mr. DAVIS, testified as follows:

My business is president of the O. F. Davis Real Estate and Loan Company.

36 Q. To what firm is that company a successor?

A. It is the immediate successor of O. F. Davis & Co., and they in turn were the successors of Davis & Snyder.

37 Q. How long have you been connected with the business of that firm or its predecessors?

A. Since about August, 1882.

38 Q. State whether or not these companies or firms kept letter-press copies of letters sent out by them.

A. Yes, sir.

39 Q. Did you have copies made of letters relating to matters between Mrs. Webster & Mr. Brown?

A. Yes, sir.

The plaintiff offers in evidence a copy of a letter dated October 14th, 1884. Received and hereto attached, marked Exhibit "J."

Plaintiff also offers in evidence letter dated October 17th, 1884. The same is hereto attached, marked Exhibit "K."

Plaintiff offers in evidence a letter from J. A. Smith to O. F. Davis, Esq. The same is hereto attached, marked Exhibit "L."

The plaintiff offers in evidence a letter to J. H. Brown, dated October 22, 1884. The same is hereto attached, marked Exhibit "M."

The plaintiff offers in evide-ce a letter from J. H. Brown to O. F. Davis & Co., dated October 24th, 1884. The same is hereto attached, marked Exhibit "N."

The plaintiff offers in evidence a letter dated January 29th, 1886, to which a notice is attached. The notice is offered in
25 evidence. The same is hereto attached, marked Exhibit O.

Plaintiff offers in evidence a copy of a letter dated February second, 1886. The same is hereto attached, marked Exhibit "P."

Plaintiff offers in evidence a letter dated February 6th from James H. Brown to O. F. Davis & Co. The same is hereto attached, marked Exhibit "Q."

The plaintiff offers in evidence a letter dated February 6th, 1886. The same is hereto attached, marked Exhibit "R."

Plaintiff offers in evidence letter from James H. Brown to O. F. Davis & Co., dated February 9th, 1890. The same is hereto attached, marked Exhibit "S."

Plaintiff offers in evidence a copy of a letter from O. F. Davis & Co. to James H. Brown, dated February 10th, 1886. A copy of same is hereto attached, marked Exhibit "T."

Plaintiff offers in evidence a letter from J. H. Brown to O. F. Davis & Co., dated February 11th, 1886. The same is hereto attached, marked Exhibit "U."

Plaintiff offers in evidence letter from J. H. Brown to O. F. Davis & Co., dated April 3rd, 1886. The same is hereto attached, marked Exhibit "V."

Plaintiff offers in evidence letter from J. H. Brown to O. F. Davis & Co., dated June 15th, 1886. The same is hereto attached, marked Exhibit "W."

The plaintiff offers in evidence letter from J. H. Brown to O. F. Davis & Co., dated April 27th, 1886. The same is hereto attached, marked Exhibit "X."

The plaintiff offers in evidence letter from O. F. Davis & Co. to James H. Brown, dated May 18th, 1887. The same is hereto attached, marked Exhibit "Y."

The plaintiff offers in evidence a letter and postal card dated May 20th, 1887, and May 18th from James H. Brown to O.
26 F. Davis & Co. The papers are hereto attached, marked Exhibit "Z."

Plaintiff offers in evidence a copy of a letter from O. F. Davis & Co. to James H. Brown, dated May 31st, 1887. The same is hereto attached, marked Exhibit "1."

The plaintiff offers in evidence letter from James H. Brown to O. F. Davis & Co., dated July 5th, 1887.

Objected to as immaterial.

The defendant conceded the genuineness of the signature and the letter and the sending of the letter. The same is hereto attached, marked Exhibit "2."

Plaintiff offers in evidence a copy of a letter from O. F. Davis & Co. to James H. Brown, dated January 31st, 1888. The same is hereto attached, marked Exhibit "3."

Plaintiff offer- in evidence letter from O. F. Davis & Co. to James H. Brown, dated September 1st, 1888. The same is hereto attached, marked Exhibit "4."

Plaintiff offers in evidence letter from James H. Brown to O. F. Davis & Co., dated September 4th, 1888. The same is hereto attached, marked Exhibit "5."

Plaintiff offers in evidence copy of a letter from Davis & Co. to James H. Brown, dated April 5th, 1889. The same is hereto attached, marked Exhibit 6.

Plaintiff offers in evidence letter from James H. Brown to O. F. Davis & Co., dated April 19th, 1889. The same is hereto attached, marked Exhibit 7.

Plaintiff offers in evidence a copy of a letter from O. F. Davis & Co. to J. H. Brown, dated May 3rd, 1889. The same is hereto attached, marked Exhibit 8.

The plaintiff offers in evidence letter from James H. Brown to O. F. Davis & Co., dated May 4th, 1889. The same is hereto attached, marked Exhibit 9.

40 Q. In these letters which have been introduced in evidence certain sums of money are mentioned as having been sent to the attorneys employed to defend the case of Yuhl *vs.* Mrs. Webster. Can you tell how much money was sent for that purpose and to whom?

27 A. I could from the books of accounts.

41 Q. Have you the books showing the amount?

A. We have the books showing some. I know of two amounts that I have; two checks which I brought with me.

42 Q. These checks are checks for the amounts referred to in these letters, are they?

A. Yes, sir.

The plaintiff offers in evidence a check for fifty dollars, dated May 18th, 1887. The same is hereto attached, marked Exhibit 10.

The plaintiff offers in evidence check for one hundred dollars to Rembolt & Childs, dated July 11th, 1887. The same is hereto attached, marked Exhibit 11.

The further examination on behalf of the plaintiff is suspended to allow defendants to examine the witness.

JAMES H. BROWN, recalled for the defendant, examined in chief by Mr. BROOME, testified as follows:

43 Q. How long have you lived in Pierce county?
A. Since the spring of 1870.
44 Q. And at what point in that county have you lived?
A. At Pierce, the county-seat.
46 Q. How far is that from the land in controversy in this case or the land that you conveyed to Mrs. Webster, described in the deed in evidence?
A. From five to seven miles.
47 Q. Have you been acquainted with the condition of that land as to occupancy and possession since the date of the deed that has been introduced in evidence?
A. I have.
48 Q. What had been prior to the date of that deed and was down to 1890 the condition of that land as to occupancy?
28 A. It is unoccupied, being wild and uncultivated land. There is no cultivation on it whatever.
49 Q. Was there any improvements of any kind?
A. No, sir.
50 Q. Was there any person in actual possession?
A. No, sir.
51 Q. And never has been?
A. No, sir.
52 Q. Did you ever see the plaintiff in this case, Amelia P. Webster?
A. I never did.
53 Q. Was she ever in Pierce county, that you know of?
A. Not to my knowledge.
54 Q. Do you know where she lives?
A. I do not.

Cross-examined by Mr. DAVIS:

55 Q. What was the value of that land in the spring in 1889?

Objected to as immaterial and not proper cross-examination.

56 Q. From ten to fifteen dollars an acre.

H. C. BROOME, sworn for the plaintiff, examined in chief by Mr. DAVIS, testified as follows:

Q. Who were the original attorneys in the case of Uhl *vs.* Webster?
A. I think Reinbolt & Childs.
Q. You afterwards succeeded them, did you not?
A. Yes, sir.
Q. In this suit?
A. Well, I helped Mr. Childs. Reinbolt, I think, went out before the case was tried in the district court of Pierce county, and I think I was employed at the time that the case was tried. On that day, I

think my first connection, I helped Mr. Childs try the case in the district court and afterwards had charge of it.

29 Q. Who employed you?

A. Mr. Childs.

Q. In the district court there was a decree quieting the title in Uhl, was there not, upon payment of the amount of taxes paid by both Brown and Mrs. Webster?

A. I think there was.

Q. The amount paid under that decree was $939.59, and costs and charges in the district court at Pierce county $97.90?

A. Yes; that is right.

Q. The case, then, was appealed to the Supreme Court, was it not?

A. Yes, sir.

Q. At whose suggestion, if you know, or request?

A. I did the work myself.

Q. Were you not during this time in correspondence with Mr. Brown concerning the litigation?

A. No; I never had any correspondence with Mr. Brown about it at all. I have talked to him about it one time and another, but I do not know acting under his directions particularly. I think Mr. Childs directed that the case be appealed. I think the appeal was taken before Mr. Childs.

Q. Who were the attorneys in the Supreme Court for Mrs. Webster?

A. Mr. Childs and myself, and Mr. Childs died while the case was pending there—before the argument was made in it, I think.

Q. What were the costs and your fees for services in the Supreme Court?

A. I think the costs in the Supreme Court, outside of printing briefs, are included in the $97.90. My fees for services, printing briefs, andexpepses at Lincoln were $190.00.

Q. Were those expenses necessary?

A. Yes; I thought they were.

Q. The printing of the brief was necessary?

A. Yes, sir.

30 Q. And your fees were reasonable?

A. I think so.

Q. What was the net amount after paying your services and the costs in the district court and Supreme Court? What was the net amount then remaining?

A. $651.69.

Q. Of this $651.69 what part represented money paid by Mrs. Webster for taxes after she purchased the property of Mr. Brown?

A. That I cannot answer, what part of that money represented it. I can tell you how much taxes she had paid or what part represented the taxes that Brown had paid with interest.

Q. That will do as well.

A. We have a stipulation of facts *with* covers it, any way.

Q. The amount allowed in this decree was made up of taxes paid by both Brown and Mrs. Webster, was not it?

A. Yes; I think it involved all the taxes that had ever been paid on the land.

Q. And of that sum $291.15 represented taxes paid by the plaintiff, Mrs. Webster?

A. Yes, sir.

Q. This money was not drawn out of court until after the case was decided in the Supreme Court, was it?

A. No, sir.

Q. Was it in court at that time?

A. Yes; it was there for Mrs. Webster from very shortly after the rendition of the decree. I do not think that they had but thirty days to pay it in, and I know that it was put in and was there subject to her order.

It is agreed that on March 19th, 1888, the plaintiff herein paid as taxes on the land in question the sum of $40.44, being the taxes for the year 1887.

31 The defendant admits the above fact to be true, but objects to its admission in this case as immaterial.

The examination of Mr. Creigh, on behalf of the plaintiff, was resumed.

THOMAS A. CREIGH, recalled for the plaintiff, testified as follows:

Examined in chief by Mr. DAVIS:

57 Q. Since you have been connected with the firm of O. F. Davis & Co. and with the O. F. Davis Company, who were her agents, if you know, in the matters relating to the land which has been mentioned?

A. O. F. Davis & Co. and their successors, the O. F. Davis Company.

Cross-examined by Mr. BROOME:

58 Q. Where does Mrs. Webster live?

A. In the city of Brooklyn, New York.

59 Q. And has lived there during all the time that you have known anything about this matter?

A. That has been her residence continually.

A stipulation is produced and offered in evidence by the defendant, with the exception of the following language contained therein: "That on March 19th, 1888, plaintiff paid the further sum of $40.44, taxes on said land for the year 1887."

All of the stipulation, excepting that part read, is offered in evidence on behalf of the defendant.

The plaintiff admits the truth of the statements in the stipulation, but objects to clauses one, two, three as immaterial and irrelevant to the issues. The stipulation is hereto attached, marked Exhibit "12."

32 The plaintiff offers in evidence a certified transcript of the pleadings and proceedings and judgment in the case of

Thomas Uhl *vs.* Amelia P. Webster, including the mandate of the Supreme Court. The same is hereto attached, marked Exhibit 13.

With this the testimony closed, no further or additional evidence being offered by either side.

Warranty Deed.

Know all men by these presents, that I, James H. Brown (unmarried) in consideration of twelve hundred and fifty (1,250) dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto Amelia P. Webster, of Fort Plain, Montgomery county, State of New York the following-described real estate, situate in the county of Pierce and State of Nebraska to wit:

The southeast quarter (¼) and the northwest quarter (¼) of section number twenty-five (25) in township number twenty-five (25) range number two (2) west, and the southeast quarter (¼) of section number twenty-five (25) township number twenty-six (26) range number three (3) west of the sixth (6th) principal meridian containing four hundred and eighty (480) acres more or less. Together with all the tenements, hereditaments and appurtenances, to the same belonging, and all the estate, title, dower, claim or demand, whatsoever of the said James H. Brown of, in, or to the same or any part thereof: to have and to hold the above-described premises, with the appurtenances unto the said Amelia P. Webster and her heirs and assigns forever: and the said James H. Brown for himself and his heirs, executors and administrators does covenant with the said Amelia P. Webster and with her heirs and assigns that he is lawfully seized of said premises, that they are free from incumbrance, that he has good right and lawful authority to sell the same, and that he will and his heirs, executors and administrators shall warrant and defend the same unto the said
33 Amelia P. Webster and her heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof, I have hereunto set my hand this 19th day of March, A. D. one thousand eight hundred and eighty-one.

JAS. H. BROWN.

In presence of—
JACOB B. SHAROT.

THE STATE OF NEBRASKA, }
Pierce County, } *ss:*

On this nineteenth day of March, A. D. 1881, before me, in and for said county clerk of the district court, personally came the above-named James H. Brown, who is personally known to me to be the identical person whose name is affixed to the above deed as grantor, and acknowledged the instrument to be his voluntary act and deed.

[SEAL.] Witness my hand and official seal the date aforesaid.

WM. B. CHILVERS,
Clerk of the District Court.

Endorsed: Warranty deed from James H. Brown to Amelia P. Webster, S. E. ¼ & N. W. ¼ sec. 25, T. 25, R. 2 W.; S. E. ¼ sec. 25, T. 26, R. 3 W., Pierce Co., Neb. Entered in numerical index of deeds March 19th, 1881. Wm. B. Chilvers, county clerk. Received for record this 19th day of March, A. D. 1881, at 1 o'clock p. m., and recorded in Book 2 of Deeds, at page 447. Wm. B. Chilvers, county clerk, Pierce county, Nebraska.

Davis & Snyder, real estate ag'ts, Feb. 3, 1881, Omaha, Neb.

PIERCE, PIERCE CO., NEBRASKA, *Feb'y 2nd*, 1881.

Messrs. Davis & Snyder, Omaha, Nebr.

GENTS: Enclosed find tax-list for '80 as per your request of taxes for '79, and, in fact, all back taxes are paid on this land.

There are patents on record for all of the Judson land. I
34 have marked the name of each owner opposite the description on your list & made a correction from S. ½ to E. ½ 30, 28, 3; otherwise all was right and title clear.

Can you make a sale of my 3 quarter sections, of which I wrote you, for $2.50 per acre, net, by the 15th of this month? I want to use the money, and if not sold will mortgage. I offered this land for sale thinking it would find a purchaser at the price, but am in a hurry. Title is all straight and taxes paid up to '80.

Truly yours, JAS. H. BROWN.

(Been snowed in.)

Endorsed: Jas. H. Brown, Pierce, Neb., Feb'y 2, A.

PIERCE, PIERCE CO., NEBRASKA, *Feb'y 26th*, 1881.

Mess. Davis & Snyder, Omaha, Nebr.

GENTS: What are the changes for a sale of my 480 acres? I must positively have the money here on the 8th of M'ch, and if sale cannot be effected so as to connect I must look elsewhere for the ducats.

Please advise me on receipt of this, so that I can have time to act in the premises.

Truly yours, JAS. H. BROWN.

P. S. 28th:

Yours fav. of 25 just to hand. I want the money to buy in some property at mortgage sale on the 8th of M'ch and hope you will be successful in making sale so that it will answer my purpose.

Please notify as soon as you can, and I will send deed and abstract, if required.

Truly yours, JAS. H. BROWN.

35 Endorsed: James H. Brown, Pierce, Nebr., Feb'y 26, '81.

H. R. Mewis, dealer in general merchandise.

PIERCE, NEBR., *M'ch 11th*, 1881.

Mess. Davis & Snyder, Omaha, Nebr.

GENTS: When your telegram came here I was absent. On my return I telegraphed you on 8th.

No papers have yet reached me; in fact, our mail has evidently gone astray. I am prepared to make deed as soon as I know to whom, what, &c., &c. You had best send another ("batch") deed and instructions as to what you want, and if I receive those you sent will let you know by telegram at once.

Truly yours, JAS. H. BROWN.

P. S.—I bo't in the land at sh'f's sale; making arrangements to use money rec'd from sale of this land in payment.

B.

Endorsed: J. H. Brown, Pierce, Neb., March 11, '81.

M. R. Mewis, dealers in general merchandise.

PIERCE, NEBR., *March 17th*, 1881.

Mess. Davis & Snyder, Omaha, Nebr.

GENTS: Have not rec'd anything from you except 2 telegrams; wrote you on the 11th, but our mails are so irregular that you may not have rec'd it.

36 Would it not be best to send me another deed & advise me of what you want in the premises?

I send this by hand of Mr. Hall, of your city, thinking it may reach you in this way when mails fail. Please let me hear from you.

I bought in the land sold at sheriff's sale; want funds as soon as I can get them.

Truly yours, JAS. H. BROWN.

Endorsed: J. H. Brown, Pierce, Nebr., March 17th, '81.

Never rec'd yours containing first deed & this of yours, dated M'ch 24th, reached me yesterday. Mails are out of whack.

PIERCE, PIERCE CO., NEBRASKA, *April 21st*, 1881.

Mess. Davis & Snyder, Omaha, Nebr.

GENTS: Enclose you tax rec'ts, as per your request, for '80, on land sold Mrs. Webster, and have had that part of decree of court granting title recorded in deed record here. Recording decree, 90 cts.; recording deed to Mrs. Webster, 1.25—$2.15 you owe me.

Weather has been bad and water "blarsted" high here—a foot higher than ever known before. No damage except to bridges and roads with us. Settlers are coming in promptly and our prospects look bright. Building has commenced in Pierce and a flouring mill will go up here as soon as water recedes sufficiently to admit of work on the d—m(n). S. F. Gilman, of Dow, Gilman & Han-

cock, of Davenport, builds the mill and will run same Will sent you copy of "recorded decree" if you wish it. (Same will be 60 cts., & I can't see that you need same.)

Yours truly, JAS. H. BROWN.

Endorsed: J. H. Brown, Pierce, Nebr., April 21st, '81.

20

37 PIERCE, PIERCE CO., NEBRASKA, *M'ch 10th*, 1881.

Mess. Davis & Snyder, Omaha, Nebr.

GENTS: Yours of 12th to hand, covering & "copy of 3rd." The originals have not reached me.

Enclose you deed duly executed and recorded, as you request; also abstract of chain of title; taxes of '80 not yet paid, but I will do so; land is entirely free and clear of all encumbrances, and to make same appear more plainly to you I have had clerk copy decree in abstract; have drawn on you today, as per your draft, at the suggestion of Mr. Mathewson (C. P.). I have drawn at sight as *as* you have deed recorded herewith.

Thanking you for your promptness, I am, truly yours,

JAS. H. BROWN.

P. S.—How much worse are our winters than yours on an "average"? Send up your Omaha R. R. I want to come down.

B.

Endorsed: J. H. Brown, Pierce, Neb., March 20th, '81.

Copy.

O. F. Davis, Nebraska land agency, 1505 Farnam street.

OMAHA, NEBR., *March* 3, 1881.

James H. Brown, Esq., Pierce, Neb.

DEAR SIR: We enclose deed for S. E. ¼ and N. W. ¼ sec. 25, T. 25, 2 W., and S. E. ¼ sec. 25, 26, 3 W., to Amelia P. Webster. Please execute; if married, Mrs. B. to join; if not, please so state in deed, & send to us with clean abstract of title. Draw on us for $1,170, as per draft enclosed, & we will honor d'ft on receipt of papers, &c.

If your county clerk not very busy and you will trust us, wish you would get the deed recorded & have it included in the abstract & forward all together at time you make draft. This will

38 save us time in getting our money.

See that abstract is complete & clear as to title & deed properly filled up, &c., & the money will be prompt; have made special effort to dispose of this land for you.

Very truly, DAVIS & SNYDER.

Blank No. 1.

The Western Union Telegraph Company.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

4—160

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeated messages.

This message is an unrepeated message and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

A. R. BREWER, *Sec'y.*

Dated Omaha, Neb., March 2, 1881.
Received at Pierce, Neb., March 2, 1881.

To J. H. Brown:

What lowest net cash for four hundred eighty acres with refusal two days trying hard to sell.

DAVIS & SNYDER.

(On margin: Read the notice at the top.)

Endorsed: Ans'd by Jas. H. B. personally.

O. F. Davis Company, Nebraska land & loan agency.

OMAHA, NEB., *Oct.* 14, 1884.

Mr. J. H. Brown, Pierce, Neb.

DEAR SIR: Please furnish us by return mail certified abstract of title to following lands: N. W. 25, 25, 2 W.; S. E. 25, 25, 2 W.; S. E. 25, 26, 2 W., being the same land purchased of you some years ago.

39 Yours truly, O. F. DAVIS & CO.

Copy.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEB., *Oct.* 17, 1884.

Mr. J. H. Brown, Pierce, Neb.

DEAR SIR: Enclosed please find our c'k for $5.70 for abs. of title. We asked for them for Mrs. Webster. A Mr. Smith, of Beatrice, has been writing to her father, a Mr. Pettit, for her address, stating that he "wanted to get service upon her for his client against certain lands purchased by her of J. H. Brown." They wrote to us and are a good deal exercised over it. We do not know anything more about it, and if you know what this suit is please give us particulars. Your warranty protects Mrs. Webster, and may be better for you to defend your title if a suit has been brought.

We notice on abs. an old mtg. that seems to have been assigned to 3rd parties after a settlement was made with Steinberg. We also notice that parties who originally held land have been transferring recently. We do not know which of the parties are suing.

Yours truly, O. F. DAVIS & CO.

J. A. SMITH, *Attorney.*

BEATRICE, NEBRASKA, *Oct.* 20, 1884.

O. F. Davis, Esq., Omaha, Neb.

D'R SIR: Yours 18 inst. at hand. Mrs. W. claims Pierce Co. land by deed from J. H. Brown, who claims by virtue of decree of court in which he and the administrators of Frank Kipp, deceased, were the only defendants in a foreclosure suit. My client claims same land by deed from Ralph Kipp, sole heir of the said Frank Kipp.

Resp. yours, J. A. SMITH.

40 Copy.

O. F. Davis Company, Nebraska Land and Loan Company.

OMAHA, NEB., *Oct.* 22, 1884.

Mr. J. H. Brown, Pierce, Neb.

DEAR SIR: The following is a copy of letter just rec'd: "Mrs. Webster claims Pierce Co. land by deed from J. H. Brown, who claims by virtue of decree of court in which he and the administrators of Frank Kipp, dec'd, were the only defendants in a foreclosure suit. My client claims same land by deed from Ralph Kipp, sole heir of the said Frank Kipp."

Please inform us if this statement is correct.

Yours, &c., O. F. DAVIS & CO.

Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *Oct. 24th*, 1884.

O. F. Davis & Co., Omaha, Nebr.

DEAR SIR: Replying to your fav. of 22nd, as the record shows the adm'r of Frank Kipp & myself were the only defendants, wherein decree was rendered in my fav. for lands a part of which were sold to Mrs. Webster—John A. Vansteenberg was pl'ff in this suit—and foreclosing a mortgage on these same lands & got a quit-claim deed from Ralph Kipp, sole surviving heir of Frank Kipp, at or near the time of this suit, so that Vanstemberg is wholly barred by the decree as is also Ralph Kipp by his quitclaim to Vanstenberg. Now, Smith, or rather Alverson, claims, as I suppose, under a quitclaim from Ralph Kipp, procured some time last spring, which amounts to nothing. He, Kipp, had previously quitclaimed to John A. Vanstenberg, who was a party to suit wherein
41 decree was rendered in my favor. There is certainly nothing in the case so far as I can discover, & have consulted with as good att'ys as we have in this part of the State.

Truly yours, JAS. H. BROWN.

Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *Jan'y 29th*, 1886.

O. F. Davis & Co., Omaha, Nebr.

GENTLEMEN: Please advise me of present cash value of lots No. 19, 22, 27, & 30, in Kensington—your city; what distance is it from P. O. and how far from street cars. Are there any buildings in

Kensington or near it; if so, what are they? If you are not familiar with prices in this add., please quote me price of property in near vicinity. The owner of these lots lives here and wants to sell them. An early reply will oblige,

Yours truly, JAS. H. BROWN.

P. S.—I can get $800 cash for patent title to Redick's half section in section 2, 28, 2 W. Will it do any good?

B.

Attached to said letter is paper in words and figures following, to wit:

Legal Notice.

To Amelia P. Webster:

You will take notice that on the 20th day of January, 1886, plaintiff herein filed his petition in the district court of Pierce county, Nebraska, against you as defendant, the object and prayer of which are to quiet his title as against you to the southeast quarter (S. E. ¼) and the northwest quarter (N. W. ¼) of section twenty-five (25), township twenty-five (25) north, of range two (2) west; also to the southeast quarter (S. E. ¼) of section twenty-five
42 (25), township twenty-six (26) north, of range three (3), all in Pierce county, Nebraska; also to set aside a certain deed to you from James H. Brown and a deed from the treasurer of Pierce county to said James H. Brown; also to set aside a decree of the district court of Pierce county, rendered September 8th, 1879, wherein one John A. Vansteenberg was plaintiff and the said James H. Brown and others were defendants; also for leave to pay into court all taxes paid by you and your grantor, with twelve per cent. interest, and for such other relief as is just and equitable. You are required to answer said petition on or before the 8th day of March, 1886.

THOMAS YULE,
By J. A. SMITH, *Attorney.*

Jan. 20, 1886.

I sent you copy of this notice the day after the first publication.

Copy. 23–467.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEBR., *Feb'y* 2, 1886.

Mr. J. H. Brown, Pierce, Neb.

DEAR SIR: Yours of 29th rec'd. We sent the former notice of Thos. Yule to Mrs. Webster and await her reply. Of course, she must defend this, and we presume she will so instruct us. As your warranty is good, it will be well for you to keep track of it and not allow it to go by default. Have you taken any steps in the matter?

The present cash value of lots 19, 22, 27, 30, Kensington add., is

not exceeding 100.00 per acre or 500.00 per lot, and this is only a speculative value.

The actual value is about 50.00 per acre for farm purposes. It is over 5 miles in an air line from our post office. This means about 10 miles around streets—section lines. We would not give 100.00 each on a wild speculation. Redick is now in California, but we do not believe he would take 800.00, but we are always ready
43 *yo help* you in a trade, and when he gets back in the spring write to us again if we forget it.

Yours, &c., O. F. DAVIS & CO.

Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *Feb'y 6th*, 1886.

O. F. Davis & Co., Omaha, Nebr.

GENTLEMEN: Thanks for your valued fav. of 2nd, giving me information relative to Kensington property.

Regarding the case of Thos. Yule *vs.* Mrs. Webster, I am not made a party to the suit. I have done nothing except look the papers over and cannot see that they have any case, although it must be defended by Mrs. Webster. I deprecate the annoyance to her (but one can't prevent shysters from plying their vocation) and will do anything I can to assist her. Look at the absurdity of the case, Yule trying to set aside a decree of court and deed without making any of the parties to the decree or (treasurer's) deed parties to his action.

Yours truly, JAS. H. BROWN.

Copy. 23-501.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEB., *Feb.* 6, 1886.

Mr. James H. Brown, Pierce, Neb.

DEAR SIR: Mrs. Amelia P. Webster writes us, by her attorney, not to allow the claim to go by default, but to defend it. As you are personally interested in this, please give it your attention and call on us for any assistance we can give. Please acknowledge receipt of this and keep us posted on your action.

Yours truly, O. F. DAVIS & CO.

44 Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *Feb'y 9th*, 1886.

O. F. Davis & Co., Omaha, Nebr.

GENTLEMEN: Your fav. of 6th rec'd. I wrote you on same date. Hon. N. A. Rainbolt, of Norfolk, is attending to my legal business; would suggest that you secure his services for Mrs. Webster. If you wish it I will employ him to look after the case for Mrs. W.

Truly yours, JAS. H. BROWN.

Copy. 24-23.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEBR., *Feb.* 10, 1886.

Mr. J. H. Brown, Pierce, Neb.

DEAR SIR: Yours rec'd. Please employ Mr. Rainbolt to defend suit for Mrs. Webster. We enclose you abstracts of title as furnished by you Oct. 16, '84. You can give Mr. R. more particulars about this matter than we can.

Yours truly, O. F. DAVIS & CO.

Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *Feb'y 11th*, 1886.

Mess. O. F. Davis & Co., Omaha, Nebr.

GENTLEMEN: Your fav. of 10th rec'd, covering abstract, &c. I am now having copies of papers made in case of Thos. Yule
45 *vs.* Mrs. Webster and will forward to A. N. Rainbolt as soon as completed and render all the assistance in the case I can; will advise you further in the premises later.

Truly yours, JAS. H. BROWN.

Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *Ap'l 3rd*, 1886.

O. F. Davis & Co., Omaha, Neb.

DEAR SIR: In the case of Yule *vs.* Mrs. Webster Mr. Rainbolt has taken charge of it and says he thinks Mrs. Webster has no grounds for fear. Our court has been adjourned until May 7th, and probably nothing will then be done more than to get a good ready.

Regarding the half section in sec. 2, 28, 2 W., do you know what Mr. Redick or whoever owns the land will take for patent title? $800.00 is the best I can do for it. You asked me to write and call your attention to this matter in the spring.

Truly yours, JAS. H. BROWN.

Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *June 15th*, 1886.

O. F. Davis & Co., Omaha, Nebr.

DEAR SIR: Yours rec'd covering deeds, affidavits, &c., from John I. Redick, which makes title O K so far as I see. I enclose you warranty deed (less taxes), to be executed by John I. Redick & wife, and $500 by draft, less fees of recording—patents, deeds, & affidavits, $5.10; net, $494.90—with my note for $500, at 8%,
46 due on or before one year, as per your instructions. Please forward deed as per enclosed blank when executed.

Truly yours, JAS. H. BROWN.

P. S.—The case of Thos. Yule *vs.* Mrs. A. P. Webster was continued until next term, as pl'ff did not give security for costs until required to do so on def't's motion at this term.

B.

Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *April 27th*, 1887.

Hon. O. F. Davis, Omaha, Nebr.

DEAR SIR: Our district court convenes on May 10th, when case of Thomas Yule against Amelia P. Webster will be for trial. Mrs. Webster's attorneys, Rainbolt & Childs, of Norfolk, Nebr., today informed me that they will have to have the evidence of Hon. Uriah Bruner and A. A. Campbell, of West Point, and require $50.00 to cover expenses. Not having time to notify you and get returns in time to get their depositions, I have advanced them money, which please refund me from Mrs. Webster. We all agree in thinking that there is but one way in which the case can terminate, viz., in favor of Mrs. Webster.

Very truly yours, JAS. H. BROWN.

Copy. 29–127.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEB., *May* 18, 1887.

Mr. James H. Brown, Pierce, Neb.

47 DEAR SIR: We enclose herewith our check for $50.00 as per your request of your letter of the 27th inst.

Yours truly, O. F. DAVIS COMPANY,
Per G. H. P.

Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *May 20th*, 1887.

O. F. Davis Company, 1505 Farnam street, Omaha, Nebr.

DEAR SIR: Your fav. of 18th rec'd covering your ch'k for $50 for attorneys Rainbolt & Childs, acc't Amelia P. Webster, in case of Thomas Yule *vs.* Amelia P. Webster, in dist. court, Pierce Co., Nebraska.

Truly yours, JAS. H. BROWN.

Postal Card.

Addressed to "Hon. O. F. Davis, Omaha, Neb., real-estate dealer, 1505 Farnam St."

PIERCE, NEBR., *May* 18, '87.

DEAR SIR: On April 27th I wrote you relative to Mrs. Webster's matters here, but have rec'd no reply. Our court was adjourned to the 24th of this month. Please let me hear from you.

Truly yours, JAS. H. BROWN.

Copy. 29–182.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEBR., *May* 31, 1887.

Mr. Jas. H. Brown, Norfolk, Neb.

DEAR SIR: A letter rec'd from Mess. Rainbolt & Childs this a. m. asks us to have Mrs. Webster send 100.00 additional
48 to carry on suit to defend title to her land. Mr. Snyder, who made this purchase, has not been here for some years, and Mr. Davis is also absent & ill.

In absence of both will you please inform us if these bills to defend this title does not properly belong to you, as she holds a full warranty deed from you, and of course if her title has to be perfected in court are not you the proper person to defend it. We advanced the 50.00 a few weeks *days* ago and have not yet written her. Of course the above is the first questions she will ask us.

We would like your reply before writing her.

Yours truly,

O. F. DAVIS COMPANY.
THOS. A. CREIGH,
Sec. and Treas.

SAN FRANCISCO, CAL., *July 5th*, '87.

O. F. Davis Company, Omaha, Nebr.:

Your fav. of 31st May is rec'd here, having been forwarded from Pierce. I left there on first of June and shall not return for a month or two yet. Regarding suit of Yule *vs.* Mrs. Webster, Mrs. W. is bound to defend against all suits, when, if her title obtained through me fails, I am held on my warranty for am't she paid me, with int.; then again the land was purchased by Mrs. Webster for a small consideration (being of little value at time of purchase) and is now worth $10.00 to $15.00 per acre, being now worth several times what she paid me for it, so that if our title should fail through the failure of Mrs. W. to properly defend same, she could not recover anything from me on warranty, as warranty is only against "lawful claims," and in the event of title failing and Mrs. W. recovering from myself on warranty, she would still be looser to a large amount, as she could only recover on the warranty the
49 sum she paid me, with interest, while the land at present is worth much more than that would amount to. I am here only temporarily looking the country over and have no "local address" here. Any communication addressed to me at Pierce, Nebr., will be attended to and forwarded (if necessary) by Farmers' & Merchants' bank.

Truly yours,

JAS. H. BROWN.

Copy. 32–480.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEB., *Jan'y* 31, 1888.

Mr. James H. Brown, Pierce, Nebraska.

DEAR SIR: What is the matter with our attorneys who have charge of the Mrs. Webster land case? We have written them several times and have sent the money, but get no replies from them. Mrs. Webster is anxious to know what this means and we are unable to give her any information. Will you please give it your attention and oblige,

Yours very truly, THE O. F. DAVIS COMPANY.
THOS. A. CREIGH, *President.*

Copy. 35–313.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEB., *Sept.* 1, 1888.

Mr. James H. Brown, Pierce, Neb.

DEAR SIR: What is the present status of the suit on land purchased from you for Amelia P. Webster?

We have lost the name of the attorney.

Yours truly, THE O. F. DAVIS COMP.

50 Land office of James H. Brown.

PIERCE, PIERCE CO., NEBR., *Sept. 4th*, 1888.

The O. F. Davis Co., Omaha, Nebr.

DEAR SIR: Replying to your fav. of 1st, my understanding of the present status of the case against Mrs. Amelia P. Webster relative to the title of the land she purchased from me is that the cause is now pending in the supreme court.

Mrs. Webster's attorney, H. C. Brome, now resides in your city, with offices at 415 & '16, over First National Bank building. I enclose you his business card. Please call on him and he will advise you fully in the premises.

Truly yours, JAS. H. BROWN.

Copy. 38–37.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEB., *Ap'l* 6, 1889.

Mr. Jas. H. Brown, Pierce, Neb.

DEAR SIR: We presume you have heard of the decision of the supreme court in the case of the land sold Mrs. Webster by you in Pierce Co. We have written Mrs. Webster for a statement of her claim against you under your warranty deed, as we cannot get at it through our books except by a good deal of work.

Yours truly, THE O. F. DAVIS CO.
THOS. A. CREIGH, *Pt.*

51 Land office of James H. Brown.

PIERCE, NEBR., *Ap'l 19th*, 1889.

The O. F. Davis Company, Omaha, Nebr.

DEAR SIR: Your favor of 12th duly rec'd and noted. Sickness in my family has prevented my giving the Mrs. Webster matter my attention since yours came to hand. I have referred the matter to my attorney as to what my responsibility is in the premises and will be in shape to talk business to you as soon as I get his report (some time next week, I think).

Very truly yours, JAS. H. BROWN.

Copy. 38-181.

O. F. Davis Company, Nebraska land and loan agency.

OMAHA, NEB., *May* 3, 1889.

James H. Brown, Esq., Pierce, Neb.

DEAR SIR: Mrs. Webster desires an immediate answer from you, as she does not know why she should be annoyed by any delays in closing up this matter, which has been a great loss and annoyance to her. Please reply at once what you wish to do. If it is inconvenient to pay the cash at once we presume she will take good secured notes.

Yours truly, THE O. F. DAVIS CO.
THOS. A. CREIG, *Pt.*

52 Land office of James H. Brown.

PIERCE, NEBR., *May 4th*, 1889.

The O. F. Davis Company, Omaha, Nebr.

DEAR SIR: My attorney advises me that I am not liable to Mrs. Webster on my warranty, same being barred by statute of limitation.

Very truly yours, JAS. H. BROWN.

No. 6942.

O. F. Davis & Co., Nebraska land and loan agency.

OMAHA, NEB., *May 18th*, 1887.

First National Bank of Omaha, Neb.

Pay to the order of James H. Brown fifty and no- 100 dollars.
$50.00. O. F. DAVIS COMPANY.
THOS. A. CREIGH,
Sec. and Treas.

Paid May 21, 1887. First National bank, Omaha, Nebr.

Endorsed: Jas. H. Brown. Pay U. S. National bank or order for collection account of Farmers' and Merchants' bank, Pierce, Neb. Paid through Omaha clearing-house May 21, 1887, to U. S. National bank.

No. 6942.

O. F. Davis & Co., Nebraska land and loan agency.

OMAHA, NEB., *July* 11, 1887.

First National Bank of Omaha, Neb.

Pay to the order of Rainbolt & Childs one hundred & no-100 dollars.

$100.00. O. F. DAVIS COMPANY.
THOS. A. CREIGH,
Sec. and Treas.

Paid Jul- 16, 1887. First National bank, Omaha, Nebr.

Endorsed: Pay A. Millard, cas., or order, for account of Farmers' & Merchants' bank, Norfolk, Neb. C. K. Mast, pres. Rain-
53 bolt & Childs. Paid through Omaha clearing-house Jul-16, 1887. Commercial National bank.

Be it remembered that heretofore, to wit, on the 20th day of January, A. D. 1886, there was filed with the clerk of the district court of Pierce county, Nebraska, a petition, which is in the words and figures following, to wit:

In the District Court of Pierce County, State of Nebraska.

THOMAS YULE
vs.
AMELIA P. WEBSTER. } Petition.

Plaintiff states—

1st. That he is the owner in fee-simple of the following-described premises and real estate, situated in the county of Pierce and State of Nebraska, to wit, the southeast quarter and the northwest quarter of section No. twenty-five, township No. twenty-five, range two, and also the southeast quarter of section No. twenty-five, township No. twenty-six, range three west.

2nd. That on or about the second day of April, A. D. 1874, one Frank Kipp died intestate, lawfully seized of said premises in fee-simple, leaving as his sole heir one Ralph Kipp, from whom and under whom plaintiff derives title to said premises by absolute deeds of conveyance.

3rd. Plaintiff further represents that defendant claims title by virtue of a warranty deed executed by one James H. Brown March 19, A. D. 1881, and recorded in the records of said county.

4th. That the title of said James H. Brown is derived from a certain tax deed executed by the treasurer of said Pierce county Aug. 30, 1879, and duly recorded in the records of said county, said pretended tax deed having been issued for a pretended tax sale of the land above described for the delinquent taxes of 1873. Said pretended tax deed is void for the following reasons, to wit:

54 5th. The said county treasurer of Pierce county failed to affix his official seal to the said pretended tax deed issued as hereinbefore set out.

6th. The pretended execution by the county treasurer of the said pretended tax deed was not attested by the county clerk with his official seal.

7th. The sale of said lands purports to have been made by the said county treasurer at private sale upon March 1st, 1875, and plaintiff alleges that the said treasurer of said county of Pierce failed and neglected to offer said premises at public sale in the fall of 1874, as required by law, and that he failed to file in the office of the county clerk of Pierce county on or before Oct. 1st, 1874, any return of his public sale of lands delinquent in 1873, 1874.

8th. The said treasurer of Pierce county failed to give the notice required by statute for the sale of lands at public sale for the delinquent *for the delinquent* tax of 1873 in 1874.

9th. That upon the 7th day of July, A. D. 1873, the board of county commissioners of said county of Pierce met and levied the necessary taxes for that year, and, among other taxes, levied the following for county purposes, to wit:

General fund, 5 mills on each dollar valuation.
Sinking, " 1 " " " " "
Bridge, " 1 " " " " "
Exp. of court-house, 1 mill on each dollar valuation.
Land road tax, $3.00 on each 160 acres of land.
School dist. tax, —.

Your petitioner alleges that the said county of Pierce was without bonded debt, and that the said sinking-fund levy of one mill on each dollar valuation was without authority of law and is void; also that the said levy for expenses of court-house of one mill on each dollar's valuation and that for bridge funds of one mill on each dollar's valuation were each without authority of law
55 and void; that said illegal levies *was* charged against the land mentioned in this action and *was* a part of the consideration for which said land was sold upon said March 1st, 1875, and for which the pretended tax deed was given.

10th. That the assessor did not take and subscribe an oath and attach the same to the assessment-roll, as required by sec. 12, chap. 66, of the Gen'l Statutes.

11th. That the said treasurer of said county of Pierce in said sale of March 1st, 1875, sold the lands in this petition mentioned for a greater sum than was then due for taxes, interest, and penalty for all purposes under the statutes of the State of Nebraska, conceding that the whole of said levy was lawful.

12th. Plaintiff further represents that Frank Kipp in his lifetime and, to wit, on the 1st day of Jan'y, A. D. 1874, executed and delivered to John A. Van Steenburg a mortgage upon all of the lands described in this petition to secure the payment of the sum of $1,000.00, due in six years from said Jan'y 1, 1874.

13th. That in 1879 the said John A. Van Steenburg commenced in the district court of Pierce county an action of foreclosure upon

his said mortgage and made as parties defendant A. A. Campbell, administrator, and Mary Briggs, administratrix, of the estate of Frank Kipp, deceased; also one James H. Brown, to whom said pretended tax deed was issued; that the said James H. Brown, upon answer and cross-bill, in which was set up his aforesaid pretended tax title, on the 8th day of Sept., A. D. 1879, obtained a decree quieting his, said James H. Brown's, tax title as against said John A. Van Steenburg's mortgage and the said administrator and administratrix, who made no answer.

14th. That in the action to foreclose the heretofore-mentioned mortgage, under which decree the defendant claims title by virtue of the said James H. Brown's warranty deed to her, Ralph Kipp, under whom this plaintiff claims and who was and is a sole heir to Frank Kipp, who departed this life on or about April 2nd,
56 A. D. 1874, was not made a party, nor did he appear in the said foreclosure action.

15th. Plaintiff offers to pay to the defendant, and hereby tenders and brings into court for defendant's use, the amount of taxes paid by her and her grantor upon the real estate in controversy, with 12 per cent. interest from date of each payment.

15. Plaintiff therefor- prays that said decree of said district court of Pierce county, Nebraska, rendered Sept. 8th, 1879, as hereinbefore set out, *that* the deed executed by the said James H. Brown to the defendant herein, and also the deed of the county treasurer of said Pierce county to the said James H. Brown, be set aside and be declared null and void; that an accounting may be had of the taxes paid by her and her grantors on said premises, and that the plaintiff be permitted to pay the same, with 12 per cent. interest thereon, to her, and that the cloud cast upon plaintiff's title to the said real estate by reason of said decree and deeds may be removed; that plaintiff's title to said premises may be quieted as to the title of defendant, and for such other and further relief as is just and equitable.

THOMAS YULE,
By A. H. BABCOCK &
J. A. SMITH, *His Att'ys.*

STATE OF NEBRASKA, }
County of Pierce. }

I, J. A. Smith, being first duly sworn, say that I am one of the attorneys of the plaintiff in the foregoing action; that the facts stated in said action are within my own personal knowledge and are true as I verily believe; that plaintiff in the foregoing petition is absent and a non-resident of Pierce county.

J. A. SMITH.

Subscribed to in my presence and sworn to before me this 20th day of Jan'y, A. D. 1886.

[Seal District Court of Pierce Co., Nebraska, *Nebraska.*]

W. B. CHILVERS, *C. D. C.*,
Per THOS. CHILVERS, *Deputy.*

57 In the District Court of Pierce County, Neb.

THOMAS YULE
vs.
AMELIA P. WEBSTER.

J. A. Smith, being first duly sworn, deposes and says that he is one of the attorneys of the plaintiff in the above-entitled action; that said plaintiff is not a resident and is absent from said Pierce county; that on the 20th day of Jan'y, A. D. 1886, he filed a petition in the district court of Pierce county against Amelia P. Webster, the object and prayer of which are to set aside a decree wherein John A. Van Steenburg was plaintiff and A. A. Campbell, administrator, and Mary Briggs, administratrix, of the estate of Frank Kipp, deceased, and James H. Brown, defendant-, which said decree was entered by this court on the 8th day of Sept., A. D. 1879; also to set aside a certain deed executed by James H. Brown to this defendant, and also a certain tax deed executed by the treasurer of Pierce county to the said James H. Brown; that an accounting be had of the taxes paid by defendant and her grantors, and that plaintiff be permitted to pay the same, with 12% interest; that the cloud cast upon plaintiff's title to the land described in said petition by reason of said decree and deeds may be removed; that plaintiff's title to said described land be quieted as against plaintiff's title, and for such other relief as is just and equitable. Affiant further states that said defendant is a non-resident of the county of Pierce and of the State of Nebraska, and that service of summons cannot be made within this State on said defendant.

Wherefor- plaintiff prays for service on said defendant by publication.

J. A. SMITH.

Subscribed in my presence and sworn to before me this 20th day of January, A. D. 1886.

[Seal District Court of Pierce Co., Nebraska.]

W. B. CHILVERS, *C. D. C.*,
By THOS. CHILVERS, *Deputy.*

58 I hereby become security for costs in above-entitled cause.

BECK, HOLMES & CO.

I hereby acknowledge myself security for costs in above-entitled cause.

WOODS CONES.

I hereby approve the surety in the above cause this 8th day of June, A. D. 1886.

WM. B. CHILVERS, *Clk D. C.*

And afterwards, on the 8th day of June, 1886, the following proceedings were had in the district court of Pierce county.

Adjourned April, A. D. 1886, Term, District Court, Pierce Co., Neb., 2nd Day of Term.

THOMAS YULE, Pl'ff,
vs.
AMELIA P. WEBSTER, Def't. } No. 125.

Now, this cause came on to be heard this 8th day of June, 1886, the same being the second day of the adjourned April, 1886, term of this court. The motion on file for security for costs is confessed by the defendant and additional and new security approved by the clerk of this court, giving the defendant 40 days in which to plead and the plaintiff 30 days in which to reply, and the cause continued for the term.

And afterwards, on the 1st day of July, A. D. 1886, an answer was filed with the clerk of said court in this cause, which was in the words and figures following, to wit:

In the District Court of Pierce County, State of Nebraska.

THOMAS YULE, Plaintiff,
vs.
AMELIA P. WEBSTER, Defendant.

The defendant, answering the plaintiff's petition herein—

1st. Admits that portion of the second paragraph in plaintiff's petition which alleges as follows, viz., that on or about the 2nd day of April, A. D. 1874, one Frank Kipp died intestate, lawfully seized of said premises in fee-simple, leaving as his sole heir one
59 Ralph Kipp, but denies the remaining allegations in said paragraph.

2nd. The defendant admits all of the 3rd paragraph in said petition, and also admits so much of the 4th paragraph as alleges as follows: "that the title of said James H. Brown is derived from a tax deed executed by the treasurer of said Pierce county Aug. 30, 1879, and duly recorded in the records of said county," but specifically denies each *and* allegations in the remaining portion of said paragraph contained.

3rd. And, for further answer and defence herein, the defendant alleges that more than three years have elapsed prior to the commencement of this action since the making, execution, delivery, and recording of the treasurer's deed to said James H. Brown, as alleged in paragraph 4th in plaintiff's petition, and the plaintiff's cause of action is barred by the statute of limitation.

4th. The defendant admits all of paragraph 12th of plaintiff's petition.

5th. The defendant also admits that in the year 1879 the said John A. Van Steenburg commenced in the district court of Pierce county an action of foreclosure upon his said mortgage and made as parties defendant A. A. Campbell, administrator, and Mary Briggs, administratrix, of the estate of Frank Kipp, deceased, as al-

leged in plaintiff's petition, and defendant alleges that James H. Brown, to whom the deed of the premises described in plaintiff's petition was issued by the county treasurer of Pierce county as aforesaid, was also made party defendant in said action, and that the said James H. Brown, upon answer and cross-bill in said action, set forth his tax title so held by him as aforesaid, and that on the 8th day of September, 1879, a decree of the district court of Pierce county was made in said action quieting said James H. Brown's tax title against said John A. Van Steenberg's mortgage and the said administrator and administratrix, who made no answer;
60 that, among other things in said decree, it was adjudged, decided, and determined that the tax deed issued, made, executed, and delivered by the county treasurer of Pierce county to the defendant, James H. Brown (therein), was in all respects regular and according to law, and it was also further adjudged and determined in said decree that the defendant (therein), James H. Brown, have full, free, and absolute title in fee-simple under his said tax deed in and to the premises described in said decree, being the same premises mentioned and described in the plaintiff's petition herein.

6th. The defendant, for further answer and defense herein, alleges that subsequent to the making of the decree as aforesaid and on the 13th day of November, 1879, Ralph Kipp, sole heir of Frank Kipp, deceased, and A. A. Campbell, administrator of Frank Kipp, deceased, made, executed, and delivered to the said John A. Van Steenberg, plaintiff in the foreclosure action aforesaid, a quitclaim deed of all of the lands and premises described in plaintiff's petition herein and to which the said James H. Brown had title by virtue of *of* the treasurer's deed of Pierce county as aforesaid.

That subsequent to the making, executing, and delivery of said quitclaim deed as aforesaid, and while said John A. Van Steenberg was the holder of the same and claiming title to said premises by virtue thereof, and on the 23rd day of December, 1879, certain changes and modifications were made in said decree by agreement between all of the parties in said action, but that portion of said decree quieting the title of the defendant therein, James H. Brown, and adjudging said tax deed regular and according to law and adjudging that said James H. Brown have full, free, and absolute title in fee-simple under said tax deed to the lands and premises described in said decree, as more fully set out heretofore in defendant's answer herein, was retained in the decree so amended and
61 modified, and at the foot *of* said decree so modified all of the parties to said foreclosure action made, executed, and signed the following stipulation and agreement in writing, viz: "We hereby agree and stipulate that the judgment and decree heretofore rendered and entered up in said cause, to wit, on the 8th day of September, A. D. 1879, be so modified and entered up as above set forth, and that the same be entered of record as the decree and judgment of said court in said cause."

That said agreement so made as aforesaid was executed on said 23rd day of December, 1879, and said decree so modified and in ac-

cordance with the stipulation as aforesaid was duly filed and entered in the clerk's office of Pierce county.

7th. The defendant, further answering, denies each and every allegation in the plaintiff's petition contained not hereinbefore expressly admitted.

Wherefor- defendant demands that the plaintiff's petition be dismissed with costs.

AMELIA P. WEBSTER,
By RAINBOLT AND CHILDS,
Her Attorneys.

STATE OF NEBRASKA, }
County of Madison. }

I, A. N. Childs, being first duly sworn, say that I am one of the firm of Rainbolt & Childs, who are the attorneys for the defendant in the foregoing action; that the facts stated in the defendant's answer in said action are within my own personal knowledge and are true as I verily believe.

That the defendant in the foregoing answer is absent and a non-resident of Pierce county.

A. N. CHILDS.

Subscribed in my presence and sworn to before me this 1st day of July, A. D. 1886.

[SEAL.] GEO. L. ILES,
Notary Public, Madison Co.

62 And afterwards, on the 16th day of November, A. D. 1886, there was filed with the clerk of said court an amended reply, which was in the words and figures following, to wit:

In the District Court of Pierce County, Nebraska.

THOMAS YULE, Plaintiff, }
vs. } Amended Reply.
AMELIA P. WEBSTER, Def't. }

Comes now plaintiff and, for amended reply to defendant's answer filed herein—

1. Denies that any such decree as that mentioned in the 5th paragraph of said answer was ever made or authorized by the district court of said Pierce county, and says that the pretended decree mentioned and described in said 5th paragraph of said answer was entered upon the record of said court by some one unknown to plaintiff without the authority of said court and contrary to the finding and judgment of said court in the case in which it purports to be the judgment of said court, and alleges that the judgment which was actually made by the court in the case mentioned in said 5th paragraph of said answer was and is that the plaintiff in said cause, John A. Van Steenburg, have judgment against the defendants in said case, A. A. Campbell, administrator, and Mary Briggs, administratrix, of the estate of Frank Kipp, deceased, in the sum of

$1,908.04, together with an attorney's fee of $150, and the mortgaged premises ordered sold subject to paramount tax lien of J. H. Brown.

2. Plaintiff also, for further reply, denies that on the 13th day of November, 1879, or at any other time said Ralph Kipp and A. A. Campbell or either of them ever made and delivered to the said John A. Van Steenburg a deed of any kind to the land in controversy herein or any part of it, and alleges the fact to be that no such deed nor any deed of any kind was ever delivered to said
63 John A. Van Steenburg or any one by him authorized to receive it to or for any part of the premises in controversy by said Ralph Kipp or by any one for him, and that said John A. Van Steenburg never had any knowledge of the existence of any such deed and never paid any consideration therefor nor in any manner authorized or procured the making of any such deed, and that if any such deed was ever written out and signed by said Ralph Kipp it was done without the knowledge or consent of said Van Steenburg and against his interest and with the fraudulent intent on the part of the parties procuring it to be done to cheat and defraud said Van Steenburg out of his interest in said land and obtain the title of record of said lands to be placed in themselves, and that the parties who procured this to be done are, as plaintiff is informed and believes, one E. P. Weatherby, who had prior to that time been the attorney of said Van Steenburg in said foreclosure proceedings, and one Jas. H. Brown, through whom the def't herein claims to derive title to *to* said lands now in controversy, and that the date of said pretended and fraudulent deed from Ralph Kipp to said John A. Van Steenburg was Dec. 13th, 1879, and not November 13th, as alleged in def't's answer.

3. Plaintiff, further replying, denies that any changes or modifications were made in the decree of Sep. 8th, 1879, as alleged in the 6th paragraph of def't's answer, with the knowledge, consent, and authority of said John A. Van Steenburg, or that any amended or modified decree or judgment was ever at any time made between the parties to said suit by said John A. Van Steenburg or by his knowledge, authority, or consent, and denies that said John A. Van Steenburg or any one with his authority or consent ever made or signed any amended or modified judgment or decree in the case mentioned in the 6th paragraph of def't's answer or in any other case in which said John A. Van Steenburg was pl'ff and said Jas. H. Brown, either
64 by himself or with any other person or persons, was def't, but alleges the facts to be that the amended and modified decree mentioned and described in the 6th paragraph of said answer was signed by said E. P. Weatherby as attorney for said John A. Van Steenburg without the latter's authority, knowledge, or consent and after his authority as an attorney in the case ceased, and that the action of said E. P. Weatherby in signing said amended decree was wholly unauthorized by said John A. Van Steenburg and was done by the said Weatherby for the fraudulent purpose and with the fraudulent intent of cheating and defrauding said Van Steenburg

out of his interest in the lands in controversy, and said Weatherby was aided and assisted in such fraudulent purpose by said J. H. Brown, who signed said pretended and modified decree well knowing that said E. P. Weatherby had no authority to sign it as attorney for said John A. Van Steenburg and for the purpose of enabling himself to share in the title to said lands, which he and said Weatherby fraudulently sought to obtain by means of said pretended and modified decree.

4. Plaintiff further alleges that the date of said amended and modified decree was in fact Dec. 3rd, 1879, and not Dec. 23rd, 1879, as stated in defendant's answer, and that the date of the original instrument as signed by said E. P. Weatherby as attorney for said John A. Van Steenburg, said J. H. Brown, and others has been by some one since the making and filing thereof changed and altered from the third day of December, 1879, to the 23rd day of said month, and also the date of said amended and modified decree as it appeared upon the records of this court at and before the commencement of this action has been changed by some one to plaintiff unknown from Dec. 3rd, 1879, to December 23, 1879, so that the date of said amended decree on said record now reads "this 23rd day of December, A. D. 1879," instead of "this 3rd day of December, A. D. 1879," as it did read before it had been changed and altered as aforesaid.

65 5. Plaintiff further alleges that the pretended decree of Sept. 8th, A. D. 1879, was duly recorded in the office of the county clerk of said Pierce county, Nebraska, but that the pretended amended and modified decree mentioned in defendant's answer was not recorded in the county clerk's office of the said Pierce county at the time plaintiff purchased the land in controversy; that plaintiff is an innocent purchaser of said land for a valuable consideration, relying alone upon the records of said county clerk's office and without any knowledge or notice of said amended decree; that at the time plaintiff purchased said premises said amended decree was not recorded in or entered upon the journal of this court, but has since then been fraudulently entered upon said journal by some one to plaintiff unknown.

Plaintiff denies each and every allegation in defendant's answer contained not herein expressly admitted or denied.

J. A. SMITH & PEMBERTON & BUSH,
Attorneys for Pl'ffs.

STATE OF NEBRASKA, }
County of Gage. }

Thomas Yule, being first duly sworn, deposes and says that he is plaintiff in the above-entitled action, and that the facts stated in the above and foregoing reply are true, as he believes.

THOS. YULE.

Subscribed in my presence and sworn to before me this 13th day of November, 1886.

[SEAL.] JOHN T. YULE,
Notary Public.

And afterwards and on the 25th day of May, 1887, the plaintiff filed an amendment to the amended reply in the words and figures following, to wit:

In the District Court of Pierce County, Nebraska.

THOMAS YULE, Plaintiff,
vs.
AMELIA P. WEBSTER, Def't.

66 *Amendment to Amended Reply.*

Comes now plaintiff and, by leave of court first obtained, amends his amended reply herein filed by striking out of said reply all of the second paragraph thereof and inserting in lieu thereof the following paragraph, to wit:

2. Plaintiff also, for further reply herein, denies that said Ralph Kipp, sole heir of said Frank Kipp, deceased, and A. A. Campbell, administrator of the estate of said Frank Kipp, made, executed, or delivered to said John A. Van Steenburg, plaintiff in said foreclosure action, a quitclaim deed of the lands or premises described in plaintiff's petition on the 13th day of November, 1879, but alleges the fact to be that said quitclaim deed of said premises from said Ralph Kipp and A. A. Campbell, administrator, was not made, executed, and delivered to said John A. Van Steenburg until the 18th day of February, 1880; at which time, and not before, said deed was executed and delivered to one E. P. Weatherby, as attorney of said John A. Van Steenburg; that the sole and only consideration of said quitclaim deed was the release by said John A. Van Steenburg of all claims and demands held by him against the estate of said Ralph Kipp, deceased, and the acceptance by said John A. Van Steenburg of said deed was in full payment and satisfaction of all said claims and demands and of the notes and mortgages upon which the said foreclosure action had been brought by said John A. Van Steenburg and of the judgment and decree in said foreclosure action, being the judgment and decree under which defendant claim title herein, and that said E. P. Weatherby, as att'y for said John A. Van Steenburg, on said 18th day of February, 1880, executed and delivered to said Ralph Kipp and A. A. Campbell, as administrators of the estate of said Frank Kipp, deceased, and instrument in writing releasing all claims and demands which said John A. Van Steenburg held against said estate of said Frank Kipp, deceased,
67 which instrument in writing was a complete release, satisfaction, and discharge of the said decree — foreclosure under which defendant claims and of the notes and mortgages upon which said decree of foreclosure was based, and that thereby and by the acceptance of said quitclaim deed said decree of foreclosure was fully paid, satisfied, and discharged, of all of which def't and her grantors, each and all, had full, perfect, and complete notice at the time she

and they and each of them purchased said premises now claimed by her in this action.

J. A. SMITH &
PEMBERTON & BUSH,
Att'ys for Pl'ffs.

STATE OF NEBRASKA, } ss:
Pierce County, }

J. A. Smith, being first duly sworn, deposes and says that he is one of the pl'ff's attorneys in the above-entitled action; that the pl'ff is now absent from said county, and that affiant believes that the facts stated in the above and foregoing amendment to the reply in said action are true.

J. A. SMITH.

Subscribed and sworn to before me this 25th day of May, 1887.
[SEAL.] WM. B. CHILVERS,
Clerk of the Dist. Court.

And afterwards and on the 27th day of May, A. D. 1887, this cause came on for trial to the court, and, the court having heard all the evidence, the same is taken under advisement by the court, by consent of parties hereto, the said cause to be argued to the court in vacation and judgment to be rendered as of this term and forty days allowed from rendition of judgment in which to file bill of exception.

And afterwards and on the 11th day of Jan., A. D. 1888,
68 the following decree was filed, viz:

Decree.

THOMAS YULE, Plaintiff, }
vs.
AMELIA P. WEBSTER, Defendant. }

Now, on this 27th day of May, A. D. 1887, this cause came on for hearing upon the petition, answer, amended reply, and amendment thereto and the evidence, and was submitted to the court upon the understanding and agreement by and between the parties hereto, plaintiff and defendant, that this cause so submitted should be taken under advisement by the court and a judgment herein rendered in vacation with the same force and effect as if rendered at this term of said court, giving to either party the right of exception and appeal, and the court, having duly considered said causes upon all the matters submitted to it, finds that the allegation of the petition are true and that the plaintiff is the owner in fee-simple of the lands therein described, subject to the payment of the taxes and interest as hereinafter stated; that the tax deed issued by the treasurer of Pierce county, Nebraska, to the said J. H. Brown on the 30th day of August, 1879, and mentioned and described in the answer was and is null and void; that the defendant's deed of said premises

from said J. H. Brown conveyed no title to said premises; that the judgment of this court in favor of said J. H. Brown and against said John A. Van Steenburg, under which defendants claims title, was and is null and void as to this plaintiff and the said Ralph Kipp, under whom plaintiff claims, for the reason that said Ralph Kipp was not a party to the action in which said judgment was rendered; that the said amended and modified decree mentioned and described in the sixth paragraph of defendant's answer was actually dated on the third day of December, 1879, and not on the twenty-third day of said month, as alleged in said answer, and that the deed to said premises from said Ralph Kipp to said John
69 Van Steenburg, although dated on the 13th day of December, 1879, was not executed and delivered to said John Van Steenburg until the 18th day of February, 1880, and that the said deed did not take effect until said last-named date; that said alleged amended and modified decree mentioned and described in the answer herein was not signed by said John A. Van Steenburg and was not authorized by him and was and is of no force or effect as against said John A. Van Steenburg or this plaintiff, and that said plaintiff is entitled to a decree, as prayed in his petition, upon payment into this court for the use and benefit of this defendant, within six months from the date of the filing of this decree with the clerk of this court, of the amount of taxes paid upon said premises by the defendant and her grantor, said Jas. H. Brown, with interest thereon at the rate of twelve per cent. per annum from the date of such payments to the date of this decree to ascertain the amount of said taxes and interest so to be paid into court for defendants.

The court did on the 12th day of December, 1887, appoint Eugene Moore, Esq., referee to take testimony, receive evidence, and make examination for that purpose and make report of the amount of said taxes and interest to this court, and on the — day of December, 1887, said referee filed his said report in this court, from which the court finds that the aggregate amount of said taxes and interest is $939.59, nine hundred & thirty-nine dollars and fifty-nine cts. It is therefore considered, adjudged, and decreed by the court that the said decree of September 8th, 1879, and the said amended and modified decree mentioned and described in defendant's answer and the foregoing findings of this court be, and the same are hereby, declared to be null and void, and are hereby vacated, annulled, and set aside; that the said tax deed from the treasurer of Pierce county, Nebraska, to said J. H. Brown, dated August 30th, 1879, is declared to be null and void and is hereby cancelled, vacated, and set aside; that the plaintiff pay into this court for the
70 use of defendant, within six months from the date of the filing of this decree, the said sum of $939.59, being the aggregate amount of the taxes and interest as aforesaid, and that upon the said payment of said sum of $939.59 into court within the time herein specified the title of plaintiff to said premises, to wit, the southeast quarter (S. E. ¼) and the northwest quarter (N. W. ¼) of section No. twenty-five (25), in township No. twenty-five (25) north, of range No. two (2) west, and the southeast quarter (S. E. ¼) of

section No. 25 twenty-five (25), township No. twenty-six (26) north, of range No. three (3) west, all in Pierce county, Nebraska, be, and the same is hereby, quieted and confirmed in plaintiff against all claims & demands of def't; that all adverse claims of the def't and all persons claiming or to claim said premises or any part thereof by, through, or under said defendant are hereby adjudged and decreed to be invalid and groundless, and that the plaintiff be, and he is hereby, adjudged and decreed to be *and* the lawful owner of said premises and of every part and parcel thereof, and the defendant is hereby enjoined perpetually from making or setting up any claim or title to said premises or any part thereof adverse to the title of plaintiff, and that plaintiff have and recover his costs herein expended, taxed at $—.

It is further considered, adjudged, and decreed that upon the failure of plaintiff to pay into this court for the use of def't, within six months from the date of the filing of this decree with the clerk of this court, the said sum of $939.59, then this cause shall be dismissed at plaintiff's costs and execution shall issue against plaintiff therefor.

To all of which findings and judgments of the court defendant at the time excepted; this decree, made this 4th day of January, 1888, at West Point, Cuming county, Nebraska, to relate back to the 27th day of May, 1887, the time of the trial of said cause,
71 except for the purpose of settling a bill of exceptions and appealing said cause to the supreme court of Nebraska. It is further ordered that defendants have forty days from this date to prepare bill of exceptions. It is further ordered that the amount of supersedeas bond to be given by defendant upon appeal from this decree be, and the same is hereby, fixed at the sum of $100.00, to be given within 30 days from this date. Nothing in this decree contained shall be construed to deprive defendant of the right to appeal this cause to the supreme court of Nebraska within six months from this date.

Dated West Point, Cuming county, Nebraska, January 4th, 1887.

J. C. CRAWFORD, *Judge.*

And afterwards, on the 11th day of January, 1888, there was filed with the clerk of said court a report of referee, which was in the words and figures following, to wit:

In the District Court of Pierce County, Nebraska.

THOMAS YULE, Pl'ff,
vs.
AMELIA P. WEBSTER, Def't. } Report of Referee.

The undersigned, who was appointed sole referee on the 12th day of December, 1887, for the purpose of finding and determining the amount of taxes, with interest, paid by the defendant in the above-entitled action, and her grantors, on the southeast quarter and the northwest quarter of section No. 25, township No. 25 north, of

range No. 2 west, and the southeast quarter of section No. 25, township No. 26 north, of range 3 west, being 480 acres of land situated in Pierce county, Nebraska, begs leave to report that on January 2nd, A. D. 1888, he, with Mr. J. A. Smith, of counsel for plaintiff, and Mr. H. C. Brome, of counsel for defendant, proceeded to Pierce county, Neb., where a hearing was had, and found the amount of taxes, with interest at 12% from the date of their pay-ent to
72 the date of this report, to be the aggregate sum of $939.59.

All of which is respectfully submitted.

EUGENE MOORE, *Referee.*

Norfolk, Neb., January 3rd, 1888.

In the Supreme Court of the State of Nebraska, January Term, 1889.

THE STATE OF NEBRASKA:

To the district court of the —— judicial district, sitting in and for the county of Pierce, Greeting:

Whereas, in a late action before you, wherein Thomas Yule was plaintiff and Amelia P. Webster was defendant, the said plaintiff recovered a judgment against said defendant, upon a transcript of which record and proceedings in your said court the said defendant prosecuted an appeal to the supreme court of the State of Nebraska, upon a trial of which cause in said supreme court it was considered by said court that the judgment rendered by you in favor of said plaintiff and against said defendant be affirmed at the costs of said defendant, taxed at $24.60:

Now therefore, you are commanded, without delay, to cause execution to issue carrying into effect your said judgment in the manner provided by law.

Witness the Hon. M. B. Reese, chief justice, and the seal of said court, at Lincoln, this 26th day of Feb., 1889.

[SEAL.] GUY A. BROWN, *Clerk.*

THE STATE OF NEBRASKA, } ss:
Pierce County, }

I, A. Steinkrause, clerk of the district court in and for said county, do hereby certify that the within and foregoing is a full, true, and complete copy of the pleadings and decree and mandate of the supreme court of said State in the case of Thomas Yule *vs.* Amelia P. Webster as the same are on file and of record in my office.

Given under my hand and the seal of said court this 20th
73 day of July, A. D. 1889.

[SEAL.] A. STEINKRAUSE, *Clerk D. C.,*
By R. A. TAUNEY, *Deputy.*

Endorsed: Copy of record. District court of Pierce county, Neb. Thomas Yule, pl'ff, *vs.* Amelia P. Webster, def't.

I, Isaac Powers, Jr., presiding judge of the district court of the State of Nebraska in and for the county of Pierce, State of Ne-

braska, do hereby certify that the foregoing attestation of the clerk of said court is in due form under the laws of said State, and the seal thereto annexed is the seal of said court.

ISAAC POWERS, JR.,
Judge of the District Court in and for the County of Pierce, State of Nebraska.

STATE OF NEBRASKA, } ss:
County of Pierce, }

I, A. Steinkraus, clerk of the district court of the State of Nebraska in and for said county, do hereby certify that the foregoing signatures is the genuine signature of the Honorable Isaac Powers, one of the presiding judges of said court.

Witness my hand and the seal of said court this 31st day of July, A. D. 1889.

[SEAL.]

A. STEINKRAUS,
Clerk Dist. Court,
By R. A. TAUNEY, *Deputy.*

Stipulation.

In the Circuit Court of the United States for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff, }
vs.
JAMES H. BROWN, Defendant. }

For the purpose of avoiding the necessity of producing witnesses and records upon the trial of this cause, it is agreed, by and between the parties hereto, that the facts hereinafter recited are true.

74 This stipulation of facts, however, being made with the understanding and agreement that either party may object to the materiality of any fact hereinafter recited upon the trial of the cause—that is to say:

First. That at the time defendant conveyed to plaintiff the premises described in plaintiff's amended petition herein filed defendant's title thereto was based solely upon a certain tax deed for said premises before that time executed and delivered to defendant by the county treasurer of Pierce county, Nebraska, and a certain decree of the district court of Pierce county, Nebraska, wherein one John A. Vansteenberg was plaintiff and A. A. Campbell, administrator of the estate of Ralph Kipp, deceased, and the defendant, James H. Brown, were defendants.

Said decree having been entered in the district court of Pierce county, Nebraska, on the 23rd day of December, A. D. 1879.

Second. Said tax deed did not contain nor was there affixed thereto the seal of the county treasurer of said Pierce county; said tax deed did not recite that the premises purporting to be conveyed thereby were sold for all the taxes due upon and charged against

the same at the time the same were sold by the treasurer of said county for taxes at the sale upon which said deed was based.

Third. It appears upon the face of said deed that said land was sold by said county treasurer in bulk for the taxes of one year.

Fourth. Said tax deed was recorded in the office of the county clerk of Pierce county, Nebraska, on the 30th day of August, 1879.

Fifth. Defendants further agree- that in the action referred to in plaintiff's amended petition, commenced in the year 1886 in the district court of Pierce county by one Thomas Yule against the plaintiff herein, there was paid to the clerk of the district court of said Pierce county, on the 11th day of January, 1888, on account of and for taxes and interest upon said land before that
75 time paid by the plaintiff herein and her grantor, the defendant herein, the sum of $939.59.

That of said sum $291.15 represented the taxes and the interest thereon paid by the plaintiff herein after the purchase of said land by her from the defendant herein, and that the balance of said sum, to wit, $648.44, represented and was paid on account of and for taxes on said premises, with interest on the same accruing and paid by the defendant herein prior to the conveyance by said defendant of said premises to the plaintiff herein; but this is not to be considered as reciting all the facts in issue.

SAVAGE, MORRIS & DAVIS,
Attorneys for Plaintiff.

H. C. BROME,
Attorney for Defendant.

[On margin:] That on March 19, 1888, plaintiff paid the further sum of $40.44, taxes on said land for the year 1887.

(On margin:) That on March 19, 1888, plaintiff paid the further sum of $40.44, taxes on said land for the year 1887.

Endorsed: No. 40, N. In the circuit court of the U. S., dist. of Nebr. Amelia P. Webster, *vs.* James H. Brown. Stipulation & testimony. Filed May 16, 1890. Elmer D. Frank, clerk. H. C. Brome.

The foregoing is all the evidence given or offered by either party upon the trial of the above-entitled cause, and upon application of the defendant the foregoing bill of exceptions is allowed by me and ordered to be made a part of the record in this cause.

Dated Omaha, Nebraska, this 27th day of December, 1890.

(S'g'd) ELMER S. DUNDY, *Judge.*

In the Circuit Court of the United States within and for the District of Nebraska.

AMELIA P. WEBSTER, Plaintiff,
vs.
JAMES H. BROWN, Defendant.

Now, on this — day of December, 1890, the foregoing bill of exceptions being presented by defendant for signature, it is
76 ordered that plaintiff have until the — day of ——, —, to prepare and submit amendments hereto.

—— ——, *Judge.*

Upon the back of said bill of exceptions appear endorsements in words and figures following, to wit: No. 40, N. U. S. circuit court, district of Nebraska. Amelia P. Webster *vs.* James H. Brown. Bill of exceptions. Filed Dec. 27, 1890. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 8th day of January, 1891, a writ of error was allowed in said case and a citation issued thereon, of which said writ of error and citation the following are the originals thereof:

77 UNITED STATES OF AMERICA, } ss.:
District of Nebraska, }

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Nebraska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Amelia P. Webster, plaintiff, and James H. Brown, defendant, a manifest error hath happened, to the great damage of the said defendant in the said cause, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States shall be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, at Omaha, in said district, this eighth day of January, 1891.

[Seal United States Circuit Court, District of Nebraska.]

E. D. FRANK, *Clerk.*

Allowed by—
ELMER S. DUNDY, *Judge.*

[Endorsed:] No. 40, N. United States circuit court, district of Nebraska. James H. Brown, pl'ff in error, *vs.* Amelia P. Webster, def't in error. Writ of error. Filed Jan. 8, 1891. E. D. Frank, clerk.

78 THE UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

To Amelia P. Webster, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein James H. Brown is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Omaha, this eighth day of January, 1891.

[Seal United States Circuit Court, District of Nebraska.]

ELMER S. DUNDY, *Judge.*

[Endorsed:] No. 40, N. United States circuit court, district of Nebraska. James H. Brown, pl'ff in error, *vs.* Amelia P. Webster, def't in error. Citation. Filed Jan. 8th, 1891. E. D. Frank, clerk.

Service acknowledged Jan'y 8, 1891.

AMELIA P. WEBSTER,
Per H. J. DAVIS, *Her Att'y.*

79 Thereupon, afterwards, to wit, on the said 8th day of January, 1891, bond was filed in said case; which said bond is in words and figures following, to wit:

Know all men by these presents that we, James H. Brown, as principal, and Benj. Lindsay, H. S. Beck, D. W. Elliott, L. R. Craig, Woods Cones, and J. C. Mohrman, as sureties, are held and firmly bound unto Amelia P. Webster in the full and just sum of four thousand four hundred dollars, to be paid to the said Amelia P. Webster or to her certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of December, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between said Amelia P. Webs*y*er, plaintiff, and James H. Brown, defendant, judgment was rendered against the said James H. Brown for $2,030.00 and costs of suit, taxed at $——, and the said James H.

Brown, defendant, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Amelia P. Webster, citing and admonishing — to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next:

Now, the condition of the above obligation is such that if the said James H. Brown shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES H. BROWN,
By H. C. BROME,
His Attorney.

80 BENJ. LINDSAY.
H. S. BECK.
D. W. ELLIOTT.
L. R. CRAIG.
WOODS CONES,
J. C. MOHRMAN.

Approved by—
ELMER S. DUNDY, *Judge.*

8 Jan., 1891.

Attached to said bond are affidavits in words and figures following, to wit:

THE STATE OF NEBRASKA, } ss:
Pierce County, }

I, Benj. Lindsay, being first duly sworn, depose and say that I am one of the sureties who signed the bond hereto attached; that I am a freeholder resident of said Pierce county; that I am worth over and above my indebtedness the sum of $2,000.00, and that I have property in said county subject to execution, aside from incumberance, of the value of $2,000.00.

BENJ. LINDSAY.

Subscribed in my presence and sworn to before me this 24th day of December, A. D. 1890.

[SEAL.] WOOD- & CONES.
Notary Public.

THE STATE OF NEBRASKA, } ss:
Pierce County, }

I, —— ——, being first duly sworn, depose and say that I am one of the sureties who signed the bond hereto attached; that I am a freeholder resident of said Pierce county; that I am worth over and above my indebtedness the sum of $2,000.00, and that I have property in said county subject to execution, aside from incumberance, of the value of $2,000.00.

J. C. MOHRMANN.

Subscribed in my presence and sworn to before me this 24 day of December, A. D. 1890.

[SEAL.] BENJ. LINDSAY,
Notary Public.

THE STATE OF NEBRASKA, } ss:
Pierce County, }

I, D. W. Elliott, being first duly sworn, depose and say that I am one of the sureties who signed the bond hereto attached; that I am a freeholder resident of said Pierce county; that I am worth over and above my indebtedness the sum of $2,000.00, and that I have property in said county subject to execution, aside from incumberance, of the value of $2,000.00.

D. W. ELLIOTT.

Subscribed in my presence and sworn to before me this 24 day of December, A. D. 1890.

[SEAL.] BENJ. LINDSAY,
Notary Public.

THE STATE OF NEBRASKA, } ss:
Pierce County, }

I, L. R. Craig, being first duly sworn, depose and say that I am one of the sureties who signed the bond hereto attached;
81 that I am a freeholder resident of said Pierce county; that I am worth over and above my indebtedness the sum of $2,000.00, and that I have property in said county subject to execution, aside from incumberance, of the value of $2,000.00.

L. R. CRAIG.

Subscribed in my presence and sworn to before me this 24 day of December, A. D. 1890.

[SEAL.] BENJ. LINDSAY,
Notary Public.

THE STATE OF NEBRASKA, } ss:
Pierce County, }

I, Woods Cones, being first duly sworn, depose and say that I am one of the sureties who signed the bond hereto attached; that I am a freeholder resident of said Pierce county; that I am worth over and above my indebtedness the sum of $2,000.00, and that I have property in said county subject to execution, aside from incumberance, of the value of $2,000.00.

WOODS CONES.

Subscribed in my presence and sworn to before me this 24 day of December, A. D. 1890.

[SEAL.] BENJ. LINDSAY,
Notary Public.

Upon the back of said bond appear endorsements in words and figures following, to wit: No. 40, N. United States circuit court, dis-

trict of Nebraska. James H. Brown, pl'ff in error, *vs.* Amelia P. Webster, def't in error. Bond. Filed Jan. 8, 1891. E. D. Frank, clerk.

82 THE UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

Pursuant to the foegoing writ of error and in obedience thereto I, Elmer D. Frank, clerk of the circuit court of the United States for said district of Nebraska, within the eighth circuit, do hereby certify that the foregoing folios, from 1 to eighty-two, contain true and faithful transcripts from the records and files of said court in the case of Amelia P. Webster, plaintiff, *vs.* James H. Brown, defendant, and that copies of the writ of error and citation have been lodged and remain in my said office.

Seal United States Circuit Court, District of Nebraska.

Witness my hand and the seal of said court, at Omaha, Nebraska, this 11th day of February, A. D. 1891.

ELMER D. FRANK, *Clerk.*

Endorsed on cover: Case No. 14,637. Nebraska C. C. U. S. No. 160. James H. Brown, plaintiff in error, *vs.* Amelia P. Webster. Filed May 12, 1891.

In The Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, 1894.

JAMES H. BROWN,
Plaintiff in Error,

vs.

AMELIA P. WEBSTER,
Defendant in Error.

No. 160.

ERROR FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF OF PLAINTIFF IN ERROR.

J. H. BLAIR,
H. C. BROME,
Attorneys for Plaintiff in Error.

STATEMENT.

This is a law action. Defendant in error, Amelia P. Webster, who was plaintiff in the court below, on the 13th day of December, 1889, filed her amended petition, the material allegations of which are as follows:

That she is a resident and citizen of the State of New York; that the defendant is a resident and citizen of the State of Nebraska; that on the 19th day of March, 1881, she purchased of defendant certain real estate in Pierce County, Nebraska, defendant conveying this land to her by warranty deed; that the entire consideration for this purchase was $1,200.00; that the title so conveyed failed and that by judicial proceedings in a court of competent jurisdiction she had been evicted from the premises; that the premises were at the time of the eviction worth the sum of $6,000.00; that in defending her title to the real estate she had expended as costs, attorneys' fees and charges, the sum of $342.20. She asked judgment against the defendant for the sum of $6,342.40 and costs of suit.

Plaintiff in error, Brown, who was defendant below, demurred to the jurisdiction upon the claim that it appeared upon the face of plaintiff's petition that the amount in controversy exclusive of interest and costs did not exceed the sum and value of $2,000.00. This demurrer was overruled. Defendant Brown then filed a plea to the jurisdiction, which was by the court stricken from the files. Thereupon, defendant answered, pleading to the merits and also denying

the jurisdiction of the court upon the ground that the amount in controversy exclusive of interest and costs was less than $2,000.00. Upon a trial to the court, jury being waived, the court found upon the issues for plaintiff and entered judgment in her favor for the sum of $2,030.00. Motion for new trial was duly filed and overruled and defendant Brown brings the cause to this court upon error.

Specification of Errors.

First. The court erred in holding and determining that it had jurisdiction of the subject matter of this suit.

Second. The court erred in rendering judgment for plaintiff in the court below and against defendant for the reason that said court was without jurisdiction of the subject matter of this action.

ARGUMENT.

There is, and under the law there can be but one question presented upon the record in this case; that is, did the Circuit Court have jurisdiction. This question must be answered from an inspection of plaintiffs' amended petition. See transcript of record, page 1. The contention of Plaintiff in Error is, that the action being brought upon the covenants of warranty in the deed and for breach thereof, that the true and lawful measure of damages is and was the amount of the purchase money, with interest on that sum from the date of payment. The amount of purchase money paid in this case was $2,000.00. If we add to that sum the amount alleged to have been paid out and disbursed by plaintiff in defending her title, $342.40, which would include costs and attorneys' fees, we have the sum of $1,542.40 and no more as the amount in controversy between the parties, exclusive of interest and costs.

The learned District Judge at the Circuit Court agreed with us that the measure of damages in a case of this kind is the purchase money, with interest, but held, as a matter of law, that all interest that had accrued prior to the bringing of the action in the Federal Court might be computed and added to the principal sum for the purpose of giving the court jurisdiction. This we submit, was erroneous.

The question to be determined here is an exceedingly simple one. Plaintiffs' recovery under the law upon the facts stated in her petition could in no event exceed $1,542.40, besides interest and costs. The Federal Statute, by virtue

of which this court could obtain jurisdiction at all, reads a follows:

"That the Circuit Court of The United States * * * "shall have original cognizance * * * where the matter in "dispute exceeds, *exclusive of interest and costs*, the sum or "value of $2,000.00".

In order that the Circuit Court can be said to have jurisdiction to hear and determine this cause it is necessary to say and hold that interest on the principal sum could be computed up to date of commencing the action for the purpose of giving jurisdiction. The sum in dispute was the purchase price of the land in question, to wit: the sum of $1,200.00, and we may concede, without at all changing the situation of the parties in this case, the additional sum of $342.20, being costs and attorneys' fees claimed to have been expended in defending the title. In order that the Circuit Court might retain jurisdiction of this case and pronounce a binding judgment it was necessary that that court should hold, and it did hold, that interest upon these principal sums might be computed up to the date of commencing the action, and as a part of the sum in controversy for the purpose of determining the jurisdiction of the court. This cannot be done.

The situation is not at all different from what it would have been had this action been based upon a promissary note executed on the day the deed was delivered and falling due on the day this suit was commenced. It would not be seriously contended that the interest accrueing upon such note prior to the date of the commencement of the action could be taken into account for the purpose of fixing the

jurisdictional sum. As supporting this contention we cite:

Moore vs. Town of Edgefield, 32nd Fed. 498.
Howard vs. Bates County, 43d Fed. 276.
Baker vs. Howell, 44th Fed. 113.

In this behalf we invoke the rule announced by this court in the case of Mansfield C. L. and M. R. Co. vs. Swan, 111 U. S. Sup. Court Reports, Page 462. "The "rule is * * * inflexible and without exception, which re- "quires this court of its own motion to deny its own juris- "diction, and in the exercise of its appellate power, that of "all other courts of the United States in all cases where "such jurisdiction does not appear affirmatively in the record "on which in the exercise of that appellate power it is called to "act. On every writ of error or appeal the first and funda- "mental question is that of jurisdiction, first of this court and "then of the court from which the record comes. This ques- "tion the court is bound to ask and answer for itself, even "when not otherwise suggested, and without respect to the "relation of the parties to it".

For the reason that the Circuit Court was plainly without jurisdiction of the subject matter of this action we ask that its judgment be reversed and the cause be remanded and dismissed.

Respectfully submitted,

J. H. BLAIR,
H. C. BROME,
Attorneys for Plaintiff in Error.

Supreme Court of the United States.

October Term, 1894.

JAMES H. BROWN, *Plaintiff in Error*,
vs.
AMELIA P. WEBSTER, *Defendant in Error.*
} No. 160.

BRIEF OF DEFENDANT IN ERROR.

This cause was tried by a judge without a jury. The record discloses no special verdict, no agreed statement of facts, and no bill of exceptions that in proper form presents an erroneous ruling of the Court below. There is no assignment of errors in the record. Unless, therefore, error appears on the face of the record the judgment should be affirmed. *Guild v. Frontin*, 18 How., 135.

Plaintiff in error relies solely upon his contention that the Circuit Court had no jurisdiction—the matter in dispute not exceeding $2,000, exclusive of *interest* and costs.

In his brief the plaintiff says that the judge "held as a matter of law that all interest that had accrued prior to the beginning of the action in the Federal Court might be computed and added to the principal sum for the purpose of giving the Court jurisdiction."

Nothing in the record shows that the judge thus ruled as a matter of law.

THE "MATTER IN DISPUTE" EXCEEDED, EXCLUSIVE OF COSTS, THE SUM OR VALUE OF TWO THOUSAND DOLLARS.

The Court below rendered judgment for $2,030. (*Record*, 10.)

Unless an inspection of the record clearly shows that the Court awarded this sum in violation of law, the judgment is itself conclusive of the jurisdiction of the Court.

Our action was upon a covenant to warrant and defend a title. We claimed that being evicted from premises, worth at the time of eviction $6,000, we had sustained damages in the sum of $6,342.40.

The "matter in dispute is the claim presented on the record to the legal consideration of the Court." Per CURTIS, J., in *Kanouse v. Martin*, 15 How., 207.

I.

When plaintiff below brought her suit in 1889 the law did not appear to have been settled in Nebraska as to the rule of damages in an action upon a covenant of warranty. It is true, MCCRARY, J., had said *arguendo* that the rule was well settled that the purchase money with interest was the measure of damages. But this was not a decision. The Court was passing upon the application of a defendant for leave to amend his answer in order to allege that plaintiff while in possession of the premises had committed waste; and it refused to grant leave. *Fatrick v. Leach*, 1 McCr., 250.

In the 8th edition of *Sedgwick on Damages* (1891) the editors give an elaborate note, naming all the States where the rule had been settled (page 93). It is significant that Nebraska is not included in the list.

There does not appear to have been a decision of the State Courts until after our suit was brought, when the rule of purchase money with interest was announced in *Chenney v. Straube*, 35 Nebr., 521. This was in October, 1892.

The plaintiff below, who was acting in evident good faith, had the right to contend, with some prospect of success, that the rule, obtaining in some States, of value at date of eviction might be applied in her case. At all events, it was not legally certain that she could not persuade the Court sitting in the District of Nebraska to sanction the theory on which she had brought her suit. *Barry v. Edmunds*, 116 U. S., 550.

II.

But even assuming that we had no right to ask the Court to award us the value of the premises at the date of eviction, the action still presented a matter in dispute that exceeded the needful jurisdictional amount. The "matter in dispute" was the full amount of loss that the law estimates in suits of this character. That ~~cost~~ loss is ascertained by taking the purchase money, and computing interest thereon down to the date of the eviction, and adding to these two items the expenses of defending the suit in ejectment. The result thus obtained is legal damages. It is a definite sum, into which the various elements of damage are merged. Judgment is rendered not for purchase money as such, or for interest as such. These items, and that of expenses, are resorted to as a measure or means by which a money total is reached.

The exclusion of interest and costs in the act of March 3, 1887, is intended to apply only to interest declared for and recovered *as such*. The authorities cited by the plaintiff are cases where the declaration on its face discloses a principal sum, which principal sum itself is really the only matter in dispute. Such sum is declared on as principal, while interest is claimed as an incident thereto, and separately.

In the case at bar there is no promise to pay a stipulated sum with interest. The law says that a mode of getting at the damages, in an action of this kind, shall be to ascertain what would be the result, if interest be cast on the sum named as purchase money; and that a sum equal to such interest shall be added to the amount of the purchase money, and a further element of expense be taken, and all combined into an aggregate total. Such total is the measure of the damages awarded, but the judgment is given for damages as such.

The matter in dispute, therefore, is the extent to which, under the law, damages will be awarded in this particular case. That a calculation in the nature of interest is used in order to fix the quantum of damage, does not constitute interest a part of the matter in dispute.

The process of arriving at the gross sum to be given as

damages is assimilated to what is sometimes allowed in actions of tort. The jury do not give interest as such; they are allowed to resort to it as a means of computing a proper sum to award as their verdict. *Lincoln v. Claflin*, 7 Wall., 139.

III.

The rule of awarding a sum measured by the purchase money with interest is founded upon the assumption, says a well-known text writer, that covenant of warranty takes the place of the ancient warranty of the feudal law. If the vassal was evicted of his lands by a better paramount title, he received from his lord other lands as a substitute of the same value as those he had lost, computed as at the time of the warranty. As the thing recovered now is money, instead of land, the same idea is carried out by giving to the party who has lost his land the money he paid for it and interest, so as to restore him to his original condition in that respect. III *Washburn on Real Property*, (4th Ed.,) *676; *Rawle on Covenants for Title* (3d Ed.), 313.

This explanation renders it still clearer that the matter in controversy in suits of this nature is the "other land," or its equivalent, that an evicted purchaser may demand of his grantor. Interest that enters into the computation is merely a mode of ascertaining a value. The plaintiff recovers nothing *by way of interest.* Land that has a certain ascertainable value is a matter of dispute, and the controversy is directed to a proof of that value on the one hand, and a denial on the other.

Although an interest table be called into requisition to ascertain what that value is, the value itself attaches to the plaintiff's right of action independently of an item of interest as such. Hence the matter in dispute in this class of cases has a determinate value of its own in a sense that excludes interest, within the meaning of the Act of March 3d, 1887.

The judgment of the Court below, we respectfully submit, should be affirmed.

FRANK W. HACKETT,
For Defendant in Error.

ADDENDUM.

Another explanation of the rule awarding interest on the consideration money as part of the damages is, that by this means the claim of an owner of the paramount title for mesne profits is counterbalanced.

The interest, upon this theory, is regarded not as part of what is allowed in respect of the value of the land itself, but as a part of the damages to which plaintiff is entitled in such an action. The recovery is limited "within the bounds of a recovery of mesne profits by the true owner; thus if a statute of limitations prevent a recovery of mesne profits for more than a certain number of years back, interest will be allowed for no longer time." *Rawle on Covenants for Title*, Sect. 196, and cases cited.

"The profits of the land may be more or less than the interest of the money, and the real owner may or may not demand the mesne profits. On account of these uncertainties it is impossible to establish a rule which will operate with perfect equity in all cases. But the rule which is most reasonable, and which will generally work with the least injustice, seems to be founded upon the presumption that the profits and interests are equal, and that mesne profits will be recovered by the owner."

Foster v. Thompson, 41 N. H., 373.

Whether in this class of suits so much of the judgment as is based upon interest be regarded as a part of the value of "other land;" or as a sum awarded to counterbalance a claim for mesne profits, the same result is reached, viz., that the money is not recovered *as* interest.

Interest imports the existence of a debt, a loan of property, or of a sum of money out of which it is to issue, and for the use or withholding of which it is to become payable. It imports also the existence of some obligation or duty in regard to the payment of the principal. See remarks of BROWN, J., in *Rodman v. Munson*, 13 Barb., 76.

So, even applying the technical construction, of its meaning the word "interest" as used in the statute does not extend to the judgment entered in the case at bar.

F. W. H.